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RECORDS OF THE UNITED STATES

NUERNBERG WAR CRIMES TRIALS

UNITED STATES OF AMERICA v. CARL KRAUCH ET AL. (CASE VI)

AUGUST 14, 1947-JULY 30, 1948

Roll 99

Other Items

Defense Closing Statement
(English)

Defense Briefs on Fundamental Legal Issues,
Dynamit Aktiengesellschaft, and Degesch
(English)

Defense Briefs, Ambros-Duerrfeld
(English)



THE NATIONAL ARCHIVES
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GENERAL SERVICES ADMINISTRATION

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INTRODUCTION

On the 113 rolls of this microfilm publication are reproduced the records of Case VI, *United States of America v. Carl Krauch et al.* (I. G. Farben Case), 1 of the 12 trials of war criminals conducted by the U.S. Government from 1946 to 1949 at Nuernberg subsequent to the International Military Tribunal (IMT) held in the same city. These records consist of German- and English-language versions of official transcripts of court proceedings, prosecution and defense briefs and statements, and defendants' final pleas as well as prosecution and defense exhibits and document books in one language or the other. Also included are minute books, the official court file, order and judgment books, clemency petitions, and finding aids to the documents.

The transcripts of this trial, assembled in 2 sets of 43 bound volumes (1 set in German and 1 in English), are the recorded daily trial proceedings. Prosecution statements and briefs are also in both languages but unbound, as are the final pleas of the defendants delivered by counsel or defendants and submitted by the attorneys to the court. Unbound prosecution exhibits, numbered 1-2270 and 2300-2354, are essentially those documents from various Nuernberg record series, particularly the NI (Nuernberg Industrialist) Series, and other sources offered in evidence by the prosecution in this case. Defense exhibits, also unbound, are predominantly affidavits by various persons. They are arranged by name of defendant and thereunder numerically, along with two groups of exhibits submitted in the general interest of all defendants. Both prosecution and defense document books consist of full or partial translations of exhibits into English. Loosely bound in folders, they provide an indication of the order in which the exhibits were presented before the tribunal.

Minute books, in two bound volumes, summarize the transcripts. The official court file, in nine bound volumes, includes the progress docket, the indictment, and amended indictment and the service thereof; applications for and appointments of defense counsel and defense witnesses and prosecution comments thereto; defendants' application for documents; motions and reports; uniform rules of procedures; and appendixes. The order and judgment books, in two bound volumes, represent the signed orders, judgments, and opinions of the tribunal as well as sentences and commitment papers. Defendants' clemency petitions, in three bound volumes, were directed to the military governor, the Judge Advocate General, and the U.S. District Court for the District of Columbia. The finding aids summarize transcripts, exhibits, and the official court file.

Case VI was heard by U.S. Military Tribunal VI from August 14, 1947, to July 30, 1948. Along with records of other Nuernberg

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and Far East war crimes trials, the records of this case are part of the National Archives Collection of World War II War Crimes Records, Record Group 238.

The I. G. Farben Case was 1 of 12 separate proceedings held before several U.S. Military Tribunals at Nuernberg in the U.S. Zone of Occupation in Germany against officials or citizens of the Third Reich, as follows:

<u>Case No.</u>	<u>United States v.</u>	<u>Popular Name</u>	<u>No. of Defendants</u>
1	<i>Karl Brandt et al.</i>	Medical Case	23
2	<i>Erhard Milch</i>	Milch Case (Luftwaffe)	1
3	<i>Josef Altstoetter et al.</i>	Justice Case	16
4	<i>Oswald Pohl et al.</i>	Pohl Case (SS)	18
5	<i>Friedrich Flick et al.</i>	Flick Case (Industrialist)	6
6	<i>Carl Krauch et al.</i>	I. G. Farben Case (Industrialist)	24
7	<i>Wilhelm List et al.</i>	Hostage Case	12
8	<i>Ulrich Greifelt et al.</i>	RuSHA Case (SS)	14
9	<i>Otto Ohlendorf et al.</i>	Einsatzgruppen Case (SS)	24
10	<i>Alfried Krupp et al.</i>	Krupp Case (Industrialist)	12
11	<i>Ernst von Weissacker et al.</i>	Ministries Case	21
12	<i>Wilhelm von Leeb et al.</i>	High Command Case	14

Authority for the proceedings of the IMT against the major Nazi war criminals derived from the Declaration on German Atrocities (Moscow Declaration) released November 4, 1943; Executive Order 9547 of May 2, 1945; the London Agreement of August 8, 1945; the Berlin Protocol of October 6, 1945; and the IMT Charter.

Authority for the 12 subsequent cases stemmed mainly from Control Council Law 10 of December 20, 1945, and was reinforced by Executive Order 9679 of January 16, 1946; U.S. Military Government Ordinances 7 and 11 of October 18, 1946, and February 17, 1947, respectively; and U.S. Forces, European Theater General Order 301 of October 24, 1946. Procedures applied by U.S. Military Tribunals in the subsequent proceedings were patterned after those of the IMT and further developed in the 12 cases, which required over 1,200 days of court sessions and generated more than 330,000 transcript pages.

Formation of the I. G. Farben Combine was a stage in the evolution of the German chemical industry, which for many years led the world in the development, production, and marketing of organic dyestuffs, pharmaceuticals, and synthetic chemicals. To control the excesses of competition, six of the largest chemical firms, including the Badische Anilin & Soda Fabrik, combined to form the Interessengemeinschaft (Combine of Interests, or Trust) of the German Dyestuffs Industry in 1904 and agreed to pool technological and financial resources and markets. The two remaining chemical firms of note entered the combine in 1916. In 1925 the Badische Anilin & Soda Fabrik, largest of the firms and already the majority shareholder in two of the other seven companies, led in reorganizing the industry to meet the changed circumstances of competition in the post-World War markets by changing its name to the I. G. Farbenindustrie Aktiengesellschaft, moving its home office from Ludwigshafen to Frankfurt, and merging with the remaining five firms.

Farben maintained its influence over both the domestic and foreign markets for chemical products. In the first instance the German explosives industry, dependent on Farben for synthetically produced nitrates, soon became subsidiaries of Farben. Of particular interest to the prosecution in this case were the various agreements Farben made with American companies for the exchange of information and patents and the licensing of chemical discoveries for foreign production. Among the trading companies organized to facilitate these agreements was the General Anilin and Film Corp., which specialized in photographic processes. The prosecution charged that Farben used these connections to retard the "Arsenal of Democracy" by passing on information received to the German Government and providing nothing in return, contrary to the spirit and letter of the agreements.

Farben was governed by an Aufsichtsrat (Supervisory Board of Directors) and a Vorstand (Managing Board of Directors). The Aufsichtsrat, responsible for the general direction of the firm, was chaired by defendant Krauch from 1940. The Vorstand actually controlled the day-to-day business and operations of Farben. Defendant Schmitz became chairman of the Vorstand in 1935, and 18 of the other 22 original defendants were members of the Vorstand and its component committees.

Transcripts of the I. G. Farben Case include the indictment of the following 24 persons:

Otto Ambros: Member of the Vorstand of Farben; Chief of Chemical Warfare Committee of the Ministry of Armaments and War Production; production chief for Buna and poison gas; manager of Auschwitz, Schkopau, Ludwigshafen, Oppau, Gendorf, Dyhernfurth, and Falkenhagen plants; and Wehrwirtschaftsfuehrer.

Max Brueggemann: Member and Secretary of the Vorstand of Farben; member of the legal committee; Deputy Plant Leader of the Leverkusen Plant; Deputy Chief of the Sales Combine for Pharmaceuticals; and director of the legal, patent, and personnel departments of the Works Combine, Lower Rhine.

Ernst Buergin: Member of the Vorstand of Farben; Chief of Works Combine, Central Germany; Plant Leader at the Bitterfeld and Wolfen-Farben plants; and production chief for light metals, dyestuffs, organic intermediates, plastics, and nitrogen at these plants.

Heinrich Bueteftisch: Member of the Vorstand of Farben; manager of Leuna plants; production chief for gasoline, methanol, and chlorine electrolysis production at Auschwitz and Moosbierbaum; Wehrwirtschaftsfuehrer; member of the Himmler Freundeskreis (circle of friends of Himmler); and SS Obersturmbannfuehrer (Lieutenant Colonel).

Walter Duerrfeld: Director and construction manager of the Auschwitz plant of Farben, director and construction manager of the Monowitz Concentration Camp, and Chief Engineer at the Leuna plant.

Fritz Gajewski: Member of the Central Committee of the Vorstand of Farben, Chief of Sparte III (Division III) in charge of production of photographic materials and artificial fibers, manager of "Agfa" plants, and Wehrwirtschaftsfuehrer.

Heinrich Gattineau: Chief of the Political-Economic Policy Department, "WIPO," of Farben's Berlin N.W. 7 office; member of Southeast Europe Committee; and director of A.G. Dynamit Nobel, Pressburg, Czechoslovakia.

Paul Haeffliger: Member of the Vorstand of Farben; member of the Commercial Committee; and Chief, Metals Departments, Sales Combine for Chemicals.

Erich von der Heyde: Member of the Political-Economic Policy Department of Farben's Berlin N.W. 7 office, Deputy to the Chief of Intelligence Agents, SS Hauptsturmfuehrer, and member of the WI-RUE-AMT (Military Economics and Armaments Office) of the Oberkommando der Wehrmacht (OKW) (High Command of the Armed Forces).

Heinrich Hoerlein: Member of the Central Committee of the Vorstand of Farben; chief of chemical research and development of vaccines, sera, pharmaceuticals, and poison gas; and manager of the Elberfeld Plant.

Max Ilgner: Member of the Vorstand of Farben; Chief of Farben's Berlin N.W. 7 office directing intelligence, espionage, and propaganda activities; member of the Commercial Committee; and Wehrwirtschaftsfuehrer.

Friedrich Jaehne: Member of the Vorstand of Farben; chief engineer in charge of construction and physical plant development; Chairman of the Engineering Committee; and Deputy Chief, Works Combine, Main Valley.

August von Knieriem: Member of the Central Committee of the Vorstand of Farben; Chief Counsel of Farben; and Chairman, Legal and Patent Committees.

Carl Krauch: Chairman of the Aufsichtsrat of Farben and Generalbevollmaechtigter fuer Sonderfragen der Chemischen Erzeugung (General Plenipotentiary for Special Questions of Chemical Production) on Goering's staff in the Office of the 4-Year Plan.

Hans Kuehne: Member of the Vorstand of Farben; Chief of the Works Combine, Lower Rhine; Plant Leader at Leverkusen, Elberfeld, Uerdingen, and Dormagen plants; production chief for inorganics, organic intermediates, dyestuffs, and pharmaceuticals at these plants; and Chief of the Inorganics Committee.

Hans Kugler: Member of the Commercial Committee of Farben; Chief of the Sales Department Dyestuffs for Hungary, Rumania, Yugoslavia, Greece, Bulgaria, Turkey, Czechoslovakia, and Austria; and Public Commissar for the Falkenau and Aussig plants in Czechoslovakia.

Carl Lautenschlaeger: Member of the Vorstand of Farben; Chief of Works Combine, Main Valley; Plant Leader at the Hoechst, Griesheim, Mainkur, Gersthofen, Offenbach, Eystrup, Marburg, and Neuhausen plants; and production chief for nitrogen, inorganics, organic intermediates, solvents and plastics, dyestuffs, and pharmaceuticals at these plants.

Wilhelm Mann: Member of the Vorstand of Farben, member of the Commercial Committee, Chief of the Sales Combine for Pharmaceuticals, and member of the SA.

Fritz ter Meer: Member of the Central Committee of the Vorstand of Farben; Chief of the Technical Committee of the Vorstand that planned and directed all of Farben's production; Chief of Sparte II in charge of production of Buna, poison gas, dyestuffs, chemicals, metals, and pharmaceuticals; and Wehrwirtschaftsfuehrer.

Heinrich Oster: Member of the Vorstand of Farben, member of the Commercial Committee, and manager of the Nitrogen Syndicate.

Hermann Schmitz: Chairman of the Vorstand of Farben, member of the Reichstag, and Director of the Bank of International Settlements.

Christian Schneider: Member of the Central Committee of the Vorstand of Farben; Chief of Sparte I in charge of production of nitrogen, gasoline, diesel and lubricating oils, methanol, and organic chemicals; Chief of Central Personnel Department, directing the treatment of labor at Farben plants; Wehrwirtschaftsfuehrer; Hauptabwehrbeauftragter (Chief of Intelligence Agents); Hauptbetriebsfuehrer (Chief of Plant Leaders); and supporting member of the Schutzstaffeln (SS) of the NSDAP.

Georg von Schnitzler: Member of the Central Committee of the Vorstand of Farben, Chief of the Commercial Committee of the Vorstand that planned and directed Farben's domestic and foreign sales and commercial activities, Wehrwirtschaftsfuehrer (Military Economy Leader), and Hauptsturmfuehrer (Captain) in the Sturmabteilungen (SA) of the Nazi Party (NSDAP).

Carl Wurster: Member of the Vorstand of Farben; Chief of the Works Combine, Upper Rhine; Plant Leader at Ludwigshafen and Oppau plants; production chief for inorganic chemicals; and Wehrwirtschaftsfuehrer.

The prosecution charged these 24 individual staff members of the firm with various crimes, including the planning of aggressive war through an alliance with the Nazi Party and synchronization of Farben's activities with the military planning of the German High Command by participation in the preparation of the 4-Year Plan, directing German economic mobilization for war, and aiding in equipping the Nazi military machines.¹ The defendants also were charged with carrying out espionage and intelligence activities in foreign countries and profiting from these activities. They participated in plunder and spoliation of Austria, Czechoslovakia, Poland, Norway, France, and the Soviet Union as part of a systematic economic exploitation of these countries. The prosecution also charged mass murder and the enslavement of many thousands of persons particularly in Farben plants at the Auschwitz and Monowitz concentration camps and the use of poison gas manufactured by the firm in the extermination

¹The trial of defendant Brueggemann was discontinued early during the proceedings because he was unable to stand trial on account of ill health.

of millions of men, women, and children. Medical experiments were conducted by Farben on enslaved persons without their consent to test the effects of deadly gases, vaccines, and related products. The defendants were charged, furthermore, with a common plan and conspiracy to commit crimes against the peace, war crimes, and crimes against humanity. Three defendants were accused of membership in a criminal organization, the SS. All of these charges were set forth in an indictment consisting of five counts.

The defense objected to the charges by claiming that regulations were so stringent and far reaching in Nazi Germany that private individuals had to cooperate or face punishment, including death. The defense claimed further that many of the individual documents produced by the prosecution were originally intended as "window dressing" or "howling with the wolves" in order to avoid such punishment.

The tribunal agreed with the defense in its judgment that none of the defendants were guilty of Count I, planning, preparation, initiation, and waging wars of aggression; or Count V, common plans and conspiracy to commit crimes against the peace and humanity and war crimes.

The tribunal also dismissed particulars of Count II concerning plunder and exploitation against Austria and Czechoslovakia. Eight defendants (Schmitz, von Schnitzler, ter Meer, Buergin, Haeffliger, Ilgner, Oster, and Kugler) were found guilty on the remainder of Count II, while 15 were acquitted. On Count III (slavery and mass murder), Ambros, Bueteffisch, Duerrfeld, Krauch, and ter Meer were judged guilty. Schneider, Bueteffisch, and von der Heyde also were charged with Count IV, membership in a criminal organization, but were acquitted.

The tribunal acquitted Gajewski, Gattineau, von der Heyde, Hoerlein, von Knieriem, Kuehne, Lautenschlaeger, Mann, Schneider, and Wurster. The remaining 13 defendants were given prison terms as follows:

<u>Name</u>	<u>Length of Prison Term (years)</u>
Ambros	8
Buergin	2
Bueteffisch	6
Duerrfeld	8
Haeffliger	2
Ilgner	3
Jaehne	1 1/2
Krauch	6
Kugler	1 1/2
Oster	2
Schmitz	4
von Schnitzler	5
ter Meer	7

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All defendants were credited with time already spent in custody.

In addition to the indictments, judgments, and sentences, the transcripts also contain the arraignment and plea of each defendant (all pleaded not guilty) and opening statements of both defense and prosecution.

The English-language transcript volumes are arranged numerically, 1-43, and the pagination is continuous, 1-15834 (page 4710 is followed by pages 4710(1)-4710(285)). The German-language transcript volumes are numbered 1a-43a and paginated 1-16224 (14a and 15a are in one volume). The letters at the top of each page indicate morning, afternoon, or evening sessions. The letter "C" designates commission hearings (to save court time and to avoid assembling hundreds of witnesses at Nuernberg, in most of the cases one or more commissions took testimony and received documentary evidence for consideration by the tribunals). Two commission hearings are included in the transcripts: that for February 7, 1948, is on pages 6957-6979 of volume 20 in the English-language transcript, while that for May 7, 1948, is on pages 14775a-14776 of volume 40a in the German-language transcript. In addition, the prosecution made one motion of its own and, with the defense, six joint motions to correct the English-language transcripts. Lists of the types of errors, their location, and the prescribed corrections are in several volumes of the transcripts as follows:

- First Motion of the Prosecution, volume 1
- First Joint Motion, volume 3
- Second Joint Motion, volume 14
- Third Joint Motion, volume 24
- Fourth Joint Motion, volume 29
- Fifth Joint Motion, volume 34
- Sixth Joint Motion, volume 40

The prosecution offered 2,325 prosecution exhibits numbered 1-2270 and 2300-2354. Missing numbers were not assigned due to the difficulties of introducing exhibits before the commission and the tribunal simultaneously. Exhibits 1835-1838 were loaned to an agency of the Department of Justice for use in a separate matter, and apparently No. 1835 was never returned. Exhibits drew on a variety of sources, such as reports and directives as well as affidavits and interrogations of various individuals. Maps and photographs depicting events and places mentioned in the exhibits are among the prosecution resources, as are publications, correspondence, and many other types of records.

The first item in the arrangement of prosecution exhibits is usually a certificate giving the document number, a short description of the exhibits, and a statement on the location of the original document or copy of the exhibit. The certificate is followed by the actual prosecution exhibit (most are photostats,

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but a few are mimeographed articles with an occasional carbon of the original). The few original documents are often affidavits of witnesses or defendants, but also ledgers and correspondence, such as:

<u>Exhibit No.</u>	<u>Doc. No.</u>	<u>Exhibit No.</u>	<u>Doc. No.</u>
322	NI 5140	1558	NI 11411
918	NI 6647	1691	NI 12511
1294	NI 14434	1833	NI 12789
1422	NI 11086	1886	NI 14228
1480	NI 11092	2313	NI 13566
1811	NI 11144		

In rare cases an exhibit is followed by a translation; in others there is no certificate. Several of the exhibits are of poor legibility and a few pages are illegible.

Other than affidavits, the defense exhibits consist of newspaper clippings, reports, personnel records, Reichgesetzblatt excerpts, photographs, and other items. The 4,257 exhibits for the 23 defendants are arranged by name of defendant and thereunder by exhibit number. Individual exhibits are preceded by a certificate wherever available. Two sets of exhibits for all the defendants are included.

Translations in each of the prosecution document books are preceded by an index listing document numbers, biased descriptions, and page numbers of each translation. These indexes often indicate the order in which the prosecution exhibits were presented in court. Defense document books are similarly arranged. Each book is preceded by an index giving document number, description, and page number for every exhibit. Corresponding exhibit numbers generally are not provided. There are several unindexed supplements to numbered document books. Defense statements, briefs, pleas, and prosecution briefs are arranged alphabetically by defendant's surname. Pagination is consecutive, yet there are many pages where an "a" or "b" is added to the numeral.

At the beginning of roll 1 key documents are filmed from which Tribunal VI derived its jurisdiction: the Moscow Declaration, U.S. Executive Orders 9547 and 9679, the London Agreement, the Berlin Protocol, the IMT Charter, Control Council Law 10, U.S. Military Government Ordinances 7 and 11, and U.S. Forces, European Theater General Order 301. Following these documents of authorization is a list of the names and functions of members of the tribunal and counsels. These are followed by the transcript covers giving such information as name and number of case, volume numbers, language, page numbers, and inclusive dates. They are followed by the minute book, consisting of summaries of the daily proceedings, thus providing an additional finding aid for the transcripts. Exhibits are listed in an index that notes the

type, number, and name of exhibit; corresponding document book, number, and page; a short description of the exhibit; and the date when it was offered in court. The official court file is summarized by the progress docket, which is preceded by a list of witnesses.

Not filmed were records duplicated elsewhere in this microfilm publication, such as prosecution and defense document books in the German language that are largely duplications of the English-language document books.

The records of the I. G. Farben Case are closely related to other microfilmed records in Record Group 238, specifically prosecution exhibits submitted to the IMT, T988; NI (Nuernberg Industrialist) Series, T301; NM (Nuernberg Miscellaneous) Series, M-936; NOKW (Nuernberg Armed Forces High Command) Series, T1119; NG (Nuernberg Government) Series, T1139; NP (Nuernberg Propaganda) Series, M942; WA (undetermined) Series, M946; and records of the Brandt case, M887; the Milch Case, M888; the Altstoetter case, M889; the Pohl Case, M890; the Flick Case, M891; the List case, M893; the Greifelt case, M894; and the Ohlendorf case, M895. In addition, the record of the IMT at Nuernberg has been published in the 42-volume *Trial of the Major War Criminals Before the International Military Tribunal* (Nuernberg, 1947). Excerpts from the subsequent proceedings have been published in 15 volumes as *Trials of War Criminals Before the Nuernberg Military Tribunal Under Control Council Law No. 10* (Washington). The Audiovisual Archives Division of the National Archives and Records Service has custody of motion pictures and photographs of all 13 trials and sound recordings of the IMT proceedings.

Martin K. Williams arranged the records and, in collaboration with John Mendelsohn, wrote this introduction.

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Target 1

Defense Closing Statement

(English)

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CLOSING STATEMENT, ALL DEFENDANTS
(ENGLISH)

Case 6
Defense

CLOSING STATEMENT

delivered by

DR. WOLFRAM VON METZLER
Defense Counsel

on behalf of all defendants in

Case 6;

" The United States of America
against
Krauch and Others "

on the general subjects:

I. THE RELEVANCY OF THE PROSECUTION'S EVIDENCE

UNDER COUNT I AND V OF THE INDICTMENT.

II. THE GENERAL THEORY OF THE RESPONSIBILITY OF THE

DEFENDANTS FOR THE ALLEGED CRIMES.

ring



May it please the Tribunal:

After a hearing of nine months in a tense and agitated atmosphere which is usual in a Court when a great issue is at stake a gigantic trial is entering on its final stage.

An incredibly vast amount of evidence has been introduced by the Prosecution on the activities of one of the biggest concerns in human history. Although the Defense since the beginning of this trial was and still is of the opinion that *most of* this evidence is irrelevant, the Defense had to cope with it and therefore was compelled to introduce in their turn numerous documents.

It is now the responsibility of this Honorable Tribunal to scrutinize all this evidence put before them both as to its relevance and probative value. It is now up to Your Honors to divest the testimony of affiants and witnesses of all those human deficiencies as bias, prejudice and fear which quite naturally to some extent affect such testimony when feelings of political hatred clash in a trial of such importance and a public opinion still conscious of the horrors of the last war exerts its pressure on those who are giving evidence relating to those terrible years which for long as we all do hope will stand out as a warning to the living and future generations.

Counsel of both sides have been engaged in these past months in a bitter struggle tending to make out their cases. It is now the responsibility of Your Honors later on in closed

Court to take control of the scales of justice ^{in any particular case/} and if ~~they~~ ^{they} should hang anything like even to throw into them some grains of mercy so as to give the defendant the benefit of a reasonable doubt.

In an effort to limit under the aspect of relevancy the vast amount of evidence produced by the Prosecution, the Defense have filed on the 17th December, 1947, a motion in which they asked for a finding of not guilty under Count I and Count V of the indictment and with regard to the alleged acts of spoliation in Austria and Czechoslovakia on the ground of the irrelevancy of said evidence. So far this motion was successful only with respect to the alleged acts of spoliation in Austria and Czechoslovakia.

With Your Honors' permission and upon instruction by all defense counsel I therefore shall state now once more briefly the position of the Defense as to the relevancy of said evidence under Count I and V. Insofar I am speaking for all defendants and not only for the defendants Gogewski and Haefliger.

To make myself quite clear I do not propose to deal with the probative value of the vast evidence put before Your Honors under Count I of the indictment both by the Prosecution and by the Defense. I therefore will not embark in a detailed scrutiny of said evidence. For as we respectfully submit it is the firm conviction of the Defense that from a legal point of view and on the basis of the principles developed by the IMT all of this evidence is irrelevant and does not bear out the

charges under Count I and V. For this reason in my humble opinion it will suffice to view in a global manner the general categories of said evidence as grouped in the Trial Brief of the Prosecution bringing them in relation to the principles established by the IMT regarding crimes against peace.

At the outset it may be worth while to survey the situation as it has so far developed in respect to charges of crimes against peace in the Nuremberg Tribunal trying German industrialists. In the first case of this nature against Flick a.o. (Case No. 5) no such charge was raised by the Prosecution although the Flick-concern contributed to a substantial degree to the German rearmament and some of the defendants had leading positions in the industrial life of Germany.

In the Case No. 10 versus Krupp a.o. upon a similar motion of the Defense as filed in this Court, the Tribunal No. III in its session of 5th April 1948 (transcript page 6431) ruled that the entire evidence offered by the Prosecution under the charge of crimes against peace and a conspiracy to this effect was irrelevant and therefore acquitted all defendants of said charges. It is in our opinion rather significant that hereby a Nuremberg Tribunal has accepted the viewpoint of the Defense regarding the inconsistency of such evidence with the principles developed in the IMT judgment notwithstanding the fact that the accused industrialists who

were acquitted of said charges were the leaders of one of the most important armament-concerns of Germany which produced a substantial part of the weapons for the Nazi war machine before and after the outbreak of the war and which therefore according to a well-known slogan repeatedly used in various speeches of Hitler and his followers was styled the "Armoury of the Reich".

Before arguing the relevancy of the different groups of evidence offered by the Prosecution under Count I I do not propose to go into the controversial question as to the legal aspect under which crimes against peace should be viewed.

The controversy whether the rules governing this case should be derived from the German penal law or from a judicial system based either on the Continental law of Europe or on the all-embracing international law, this controversy can be completely left aside for the purpose of arguing the specific question forming the task of my address to Your Honors, namely, the relevancy of the Prosecution's evidence under Count I. For be it the German penal law or the Continental law of Europe or the International law as laid down in the IMT Charter of 8th August 1945, the decisive factor in assessing the criminal responsibility of the defendants under Count I and V are the principles developed by the IMT regarding crimes against peace as already argued in our motion of the 17th December 1947. Insofar the interpretation of the just mentioned Charter by the IMT is of vital importance and its judgment must be re-

garded in itself a contribution to the law applicable to crimes against peace. *if we continue to argue that the IMT judgment is a precedent.*

There is a certain irony that the Prosecution whilst repeatedly referring in different parts of their Trial Brief to the IMT judgment as an important precedent, in arguing their case under Count I and V have entirely disregarded the principles established by the IMT as to crimes against peace. The whole confusion in our opinion is due to the fact that originally the Prosecution laid too much stress on the provision of Art. II, para 2 f) of Control Council Law No. 10 saying, quote:

"Any person without regard to nationality or the capacity in which he acted, is deemed to have committed a crime as defined in para 1 of this Article if he held a high position in the financial, industrial or economic life of any such country."

End quote.

As already argued in our motion, Control Council Law No. 10 has been issued pursuant to the IMT Charter in order to give effect to its provisions. Therefore the interpretation given by the IMT to said Charter rules also the provisions of Control Council Law No. 10, the latter having been issued already before the IMT passed its judgment.

Now the Prosecution, as already shown in our motion, apparently have abandoned their original theory that the above mentioned provision of Control Council Law No. 10 shifts the burden of proof concerning the knowledge of Hitler's aims to the defendants by saying on page 2 of their Preliminary Trial

Brief, Part I, quotes:

"This provision, we believe, is not intended to attach criminal guilt automatically to all holders of high positions."

End quote.

It should be noted in this connection that also the IMT judgment under certain circumstances recognizes the responsibility of business men for crimes against peace, ^{Exhibit p. 526} quote:

"Hitler could not make aggressive war by himself. He had to have the cooperation of statesmen, military leaders, diplomats and business men. When they, with knowledge of his aims, gave him their cooperation, they made themselves party to the plan he had initiated."

End quote.

It is therefore the position of the Defense that the provision of Art. II, para 2 f), of Control Council Law No. 10 is of no practical value in assessing the criminal responsibility of the defendants for the alleged crimes against peace. The Prosecution by abandoning their original theory that said provision shifts the burden of proof to the defendants and by referring in their answer to the Defense motion on page 2 to the above quoted passage of the IMT judgment practically do not attach now any weight to said provision, as well.

It follows therefrom in the opinion of the Defense that the responsibility of the defendants for crimes against peace should be judged exclusively according to the principles laid down in the IMT judgment as to said crimes.

The whole problem therefore turns on the question what is "knowledge of Hitler's aims" in the meaning of the

above mentioned passage of the IMT judgment.

It is the position of the Defense that much time would have been saved in this trial if the Prosecution from the beginning would have paid more attention to this question that is to the state of mind required by the IMT for the commission of a crime against peace before pouring out the incredibly vast amount of evidence on the degree of Farben's participation in the German rearmament. Undoubtedly, Farben contributed to a certain extent to the German armament just as well as all the other German firms engaged in the production of strategic material did. Whether Farben's share in the German armament production in their field amounted to 20, 30, 50 or 70% is of no interest in this connection. The only thing that matters is: Were the defendants personally responsible for furthering Hitler's aggressive plans, in other words, did they have knowledge of Hitler's aggressive aims?

This question therefore should be considered first and above all before going into the details of Farben's participation in the strengthening of the German war potential. For to speak in the words of the IMT judgment in Book No. 1 on page 308, quote:

"..... But rearmament of itself is not criminal under the Charter."

End quote.

And in Book No. 1 on page ³³⁰ 309, quote:

"His activities -namely those of the Minister for Armament and Munition Speer- in charge of German armament production were in aid of the war effort in the same way that other

productive enterprises aid in the waging of war; but the Tribunal is not prepared to find that such activities involve engaging in the common plan to wage aggressive war as charged under Count I or waging aggressive war as charged under Count II."

End quote.

If therefore the key problem under Count I and V of the indictment is the question what is knowledge of Hitler's aims in the light of the principles developed by the IMT it may be worth while to state briefly those principles and to contrast with them the theory adopted by the Prosecution as to the state of mind of the defendants in their Preliminary Trial Brief. In the opinion of the Defense it will appear then that the Prosecution's theory is in flat contradiction to those principles laid down in the IMT judgment and therefore cannot be accepted as a legally sound basis for assessing the criminal responsibility of the defendants.

Now the Prosecution argue that the IMT case is a different case, that the defendants there were governmental and military functionaries whereas the defendants before this Tribunal are business men.

To this the Defense would reply: The very fact that the defendants in the IMT case belonged to the highest governmental and military functionaries of the Nazi system permits but one conclusion, if justice is to be done to the defendants in this dock: In assessing the criminal responsibility of these defendants who are ordinary business men

there can be undoubtedly adopted no stricter standard than in the case of the top representatives of the Nazi system who stood before the IMT. Does the Prosecution really contend that the defendants in this dock knew more of Hitler's aims than men like Schacht, von Papen, Speer, Frank, Bormann, having been members of the former Reich Cabinet, or Sauckel, Kaltenbrunner, von Schirach, Streicher and Fritzsche, having held governmental key positions in the former Reich, who all were acquitted by the IMT of the charge of having committed a crime against peace? It is unconceivable and yet the Prosecution apparently take this viewpoint which in our mind is inconsistent with the principles of justice and fairness.

The theory developed by the IMT as to what is knowledge of Hitler's aggressive aims in this connection is briefly the following:

As follows from the grounds of the acquittal of the IMT defendants Schacht and Speer who both in a substantial degree were responsible for the German armament before and after the outbreak of the war, armament of itself is no crime against peace. Therefore no conclusion as to a knowledge of Hitler's aggressive plans can be drawn from the fact of a participation in the German armament however substantial it may have been.

"Knowledge of Hitler's aggressive aims" according to the IMT judgment is not identical with the so-called common knowledge of what Hitler might do or not. It is a special know-

ledge of specific aggressive plans which Hitler revealed to a certain limited circle of his closest advisers especially in four secret conferences which took place on 5th November, 1937, 23rd May 1939, 22nd August 1939, and 23rd November 1939. Therefore the above mentioned defendants in the IMT case have been acquitted on the ground that they were not informed about those specific plans.

The reason why the IMT is limiting in the just described manner the responsibility for crimes against peace may be derived from the following passage in book 1, page ⁴⁵⁶~~455~~, quote:

"This discretion is a judicial one and does not permit arbitrary action but should be exercised in accordance with well-settled legal principles, one of the most important of which is that criminal guilt is personal and that mass punishments should be avoided."

End quote.

In fact if the state of mind required for a crime against peace would be judged by such vague standards as adopted by the Prosecution there would hardly be any sensible limitation of the circle of men responsible for such crimes in Germany which would result in what according to the IMT judgment should be avoided, namely mass punishments. For even the Prosecution cannot deny that apart from I.G. Farben numerous other German firms and individuals contributed to the strengthening of the German war potential and that the knowledge that Germany was carrying out a rearmament program was not limited to the defendants in this dock.

In contradiction to this clear and precise definition of what is "knowledge of Hitler's aggressive plans" adopted by

the IMT, the theory of the Prosecution on the state of mind required for a crime against peace is utterly vague and inconsistent with the above described principles of the IMT judgment. I quote from page 10 of the Preliminary Trial Brief of the Prosecution, Part I:

"This is the knowledge that such military power will be used for the purpose of carrying out a national policy of aggrandizement to take from the peoples of other countries their land, their property, or their personal freedoms. It is sufficient if there exists the belief that although actual force will be resorted to if necessary such purpose will be accomplished by using the military power merely as a threat.

And it is not essential that the defendants know precisely which country will be the first victim or the exact time that the property rights and personal freedoms of the peoples of any particular country will be under attack. It is sufficient that the defendants know that the military power will be used under the circumstances indicated for the purpose of taking away from peoples of other countries that which belongs to them."

End quote.

Now the question which, as I respectfully submit, Your Honors will have to ask yourselves later on in closed Court is: Can there be any reasonable doubt that all defendants acquitted by the IMT of the charge of a crime against peace, taking into consideration their position under the Nazi regime, had at least the vague amount of knowledge which according to the Prosecution is sufficient to convict a person under a charge of crimes against peace. It is the position of the Defense that there can be no such doubt and that therefore -if the ends of justice are to be met- the state of mind of defendants in this case cannot be judged by the just mentioned theory of the Prosecution.

Furthermore there can be no doubt that this theory, if accepted, would inevitably result in a mass punishment which is to be avoided according to the IMT judgment.

All this becomes particularly clear by following the line of argument adopted by the Prosecution in their Preliminary Trial Brief, Part I, under the heading "state of mind". On page 78 and following the Prosecution refer to the Nazi program and to the book of Hitler "Mein Kampf". On page 89 and following they review the political events in Germany from 1932 up to the outbreak of the war, saying on page 77, I quote:

"When viewed in the light of the political events occurring during that period there can be no doubt as to the state of mind of these defendants."

End quote.

And on page 89 the Prosecution goes on to say, quote:

"But making every allowance for human credulity and indifference, the conclusion is inescapable that, long before the attack on Poland and well in advance of the Austrian and Czechoslovakian invasion, all highly placed officials of the Third Reich, and influential men who did business with them and had access to official information and opinion, must have known that the Nazi program of aggrandizement would be carried out even if it meant war although they may not have known just when or how it would first break out."

End quote.

Finally, on page 99, the Prosecution say, quote:

"The frenzied pace of the German armament effort of the recent months and the widely publicized objectives of the Nazi party made the future only too clear. If one may concede room for doubt before 1939, after the Wehrmacht entry into Prague, no one could longer doubt that the Third Reich was ready for war."

End quote.

In applying this line of argument of the Prosecution to the defendants who were acquitted by the IMT of the charge of a crime against peace, there can be not the slightest doubt in my humble opinion that all of these men under the theory of the Prosecution in this case should have been convicted because all of them undoubtedly had the knowledge of the political events dealt with in the above mentioned part of the Prosecution's Trial Brief. And it furthermore should be clear that on the basis of the above mentioned observations of the Prosecution their theory would inevitably result in mass punishments.

It is the position of the Defense therefore that the theory of the Prosecution on the state of mind for a crime against peace and their line of argument followed under this heading of their Trial Brief is wrong and legally unsound for the purpose of assessing the criminal responsibility of these defendants.

It is most interesting to note that apparently the Prosecution itself does not feel sure as to the soundness of its theory because whilst giving in the Preliminary Trial Brief prominence to the publicity given to the program and aims of the Hitler movement, the Prosecution in their answer to the Defense motion of 17th December 1947 in para 10 make the following significant statement, quote:

"It is sufficient to note here that the Prosecution does not contend that the wide publicity given to the program and aims of the Hitler movement over a period of years is enough in itself to establish beyond a reasonable doubt that the average person within Germany had the required knowledge. And the evidence must establish more

than knowledge of the aggressive program and aims of the Nazi government and belief that there was a possibility that force would be used to carry out the policy of aggrandizement."

End quote.

I would say that this rather vacillating position of the Prosecution as to what is essential in order to prove knowledge of Hitler's aggressive aims speaks for itself.

Now the Prosecution argue that the defendants were not just ordinary business men but held official positions in the German administration. Therefore in the view of the Prosecution the defendants on account of these positions had more knowledge of Hitler's aims than an ordinary business man. However the Prosecution failed to offer any proof on this allegation which is as vague as the other parts of their theory on the state of mind of the defendants. Moreover who could possibly deny that the official and semi-official positions held by some of the defendants in the administration of the German economy including the position of the defendant Krauch within the framework of the Four Year Plan did not come up to the level of those held by the IMT defendants who were acquitted of the charge of a crime against peace.

In addition the Prosecution argue that after the outbreak of the war on the 1st September 1939, it appeared to be beyond question that the defendants knew of the aggressive character of this war. Again the Prosecution has not offered any evidence bearing out this allegation and once more the position of the Prosecution insofar is in flat contradiction to the prin-

principles laid down in the IMT judgment. I may refer in this connection once more to the acquittal of the IMT defendant Speer, the responsible Minister for Armament and Munition, and to that part of the grounds of his acquittal to which I took the liberty to refer a few moments ago. If the IMT did not consider the activities of the defendant Speer in spite of the fact that he was in charge of the entire German armament a crime against peace, then it should be clear that these defendants who did not hold a position equal to that of Speer cannot possibly be implicated because I.G. Farben's production after the outbreak of the war was in furthering the military strength of Germany. If the IMT acquitted the defendant Speer then it certainly did not assume that he had a definite knowledge of the aggressive character of the war after its outbreak.

Now the Prosecution argue that Speer became Minister for Armament and Munition some time after all the acts of aggression by Hitler had been started and were well under way. However this statement by the Prosecution does not take away from the force of the argument of the Defense. The crime of participating in the waging of an aggressive war continues until the end of such war. Therefore it cannot make any difference whether the actual aggression had already started and was well under way when Speer became responsible Minister for the German armament.

In addition I may point out that -with the exception perhaps of the defendant Schacht- all the IMT defendants acquitted of the charge of a crime against peace held important

administrative positions also after the outbreak of the war and in spite of this fact were not found guilty of having waged an aggressive war.

The Prosecution has argued furthermore that the acquitted IMT defendants did not participate in the same degree in the preparation and waging of the aggressive war as these defendants did and that the insignificant degree of such participation was the reason for their acquittal.

To this the Defense would reply only: If the Prosecution contend that any of the defendants participated in a higher degree in the preparation and waging of the aggressive war than a former member of the Reich Cabinet or a man who held an administrative key-position under the Nazi-system which, as the Prosecution say, was in all its parts directed towards carrying out a national policy of aggrandisement, then such theory clearly shows that the Prosecution has no knowledge at all what influence, as compared with even a prominent business man, top-ranking governmental official had and exercised in the Third Reich in synchronising the efforts and activities of the German nation with the aims of the Nazi policy.

Summarizing their above said arguments the Defense ^{therefore} would say that in order to establish a guilty mind on the part of the defendants under Count I and VII of the indictment, the Prosecution must prove in accordance with the principles developed by the IMT that each of the defendants was informed about specific aggressive plans of Hitler which could not leave any doubt in ~~their~~ *his*

minds as to the aggressive character of this war. Only in such case the proof offered by the Prosecution would be beyond any reasonable doubt, and the Prosecution would have made out their case.

In this connection the Defense would point out that of course it is not necessary to establish that any of the defendants took part in those secret meetings at which Hitler revealed his plans of aggression to his closest advisors. In order to establish a guilty mind on the part of the defendants it would be sufficient to prove that by some ^{way} or other they were informed of those plans.

Undoubtedly the Prosecution has not offered any direct evidence bearing out such knowledge on the part of the defendants.

That the political events and the knowledge thereof mentioned under the heading "state of mind" of the Prosecution's Preliminary Trial Brief, Part I, do not constitute such a proof has been already shown.

The only question therefore to be dealt with is whether the mass of evidence introduced by the Prosecution on Farben's activities before and after the outbreak of the war warrant a conclusion beyond any reasonable doubt that the defendants had the above mentioned knowledge of Hitler's aggressive plans, in other words, whether the proof offered by the Prosecution can be considered a circumstantial evidence beyond any reasonable doubt of such knowledge.

All of us are aware of a spirit of the law of civilized nations which finds its expression in certain principles recognized throughout the entire civilized world. Among these prin-

ciples are the following rules concerning the proof of a defendant's guilt in a criminal trial:

- One: There can be no conviction without proof of personal guilt.
- Two: Such guilt must be proved beyond a reasonable doubt.
- Three: The presumption of innocence follows each defendant throughout the trial.
- Four: The burden of proof is at all times upon the Prosecution.
- Five: If from credible evidence two reasonable inferences may be drawn, one of guilt and the other of innocence, the latter must be taken.

It is the position of the Defense that under the just stated rules the entire evidence offered by the Prosecution on Farben's activities does not constitute a circumstantial evidence bearing out beyond reasonable doubt the contention that any of the defendants had knowledge of specific aggressive plans of Hitler.

Therefore as has been already pointed out at the beginning of my arguments it will suffice to deal in a global manner with the different categories of the Prosecution's evidence on Farben's activities. I will embark now on this task.

There is first of all the alleged financial support of Hitler and the Nazi party by I.G. It is well known that the entire German industry as well as numerous German citizens made contributions to various agencies of the Nazi party and that these contributions were part of a system worked out and organized by that party. To derive therefrom a knowledge of Hitler's aggressive plans is out of discussion.

Next comes the vast amount of evidence dealing with the alleged cooperation of Farben with the German Army. As to this group of evidence as well as the other groups dealing with the creating and equipping of the Nazi military machine, the Defense would respectfully invite the Tribunal to bear in mind that all activities of this nature nowadays "on account" of the knowledge which we now have of those events might appear in a different light. It is therefore essential to put oneself in the position of an observer living before the outbreak of the war before judging any activities which took place at that time.

And there is another point which in this connection is of utmost importance and which in the opinion of the Defense has been utterly neglected by the Prosecution. It does not suffice that the Prosecution prove a knowledge by the defendants that Hitler was preparing for a war, the Prosecution has to establish on the part of the defendants the knowledge of Hitler preparing an aggressive war. It is the position of the Defense that a great deal of the confusion about the relevancy of the Prosecution's evidence under Count I has to be attributed to the fact that the Prosecution when presenting their evidence did not pay enough attention to this point.

On the basis of these observations the evidence presented by the Prosecution under the heading "Cooperation with the Wehrmacht" does not prove beyond any reasonable doubt that any of the defendants had knowledge of specific aggressive plans of Hitler. The creation and operating of the Vermittlungsstelle W

-on which the Prosecution spent so much time in presenting their evidence-, the alleged cooperation between Farben and the army in the field of inventions and research, the conduct of map exercise and war games, the setting-up of mobilization plans, the conclusion of war delivery contracts, all these activities do not warrant a conclusion beyond any reasonable doubt that any of the defendants knew that an aggressive war was at hand. These activities which besides were not confined to I.G.Farben alone but by governmental decrees were spread over the entire German industry can just as well be seen under the ^{aspect/} of either preparing for a defensive war or of giving Germany a more solid position in the sphere of foreign politics in the light of the well-known political theory: "balance of power".

Next comes the evidence offered under the heading "Four Year Plan and Economic Mobilization of Germany for War". Again the same can be said as explained above with regard to the evidence produced on the alleged cooperation of Farben with the Wehrmacht. None of the evidence offered with respect to these activities of the defendants within the framework of the Four Year Plan bears out beyond any reasonable doubt the allegation that any of the defendants had knowledge of the specific aggressive plans of Hitler. The existence and operation of the Four Year Plan were known to the German public. The program of autarky had been discussed at that time in numerous newspaper articles and public speeches. Even if some of the defendants really had some more intimate knowledge of the details of this plan, as far as their field of production was concerned, this does not warrant beyond any reasonable doubt the conclusion that they knew the Four Year Plan being

carried out in preparation of an aggressive war.

The same holds true with regard to the incredibly vast amount of evidence produced by the Prosecution under the heading "Creating and Equipping the Nazi Military Machine".

On page 26 of their Preliminary Trial Brief, Part I, the Prosecution state the following, quote:

"It will be seen that by virtue of the nature of the products manufactured and the fact that the contracts and negotiations were mainly with the military, the defendants knew their production was to build up the Nazi war machine. In addition, the quantities of production and the circumstances surrounding such production, especially the timing of the consecutive accelerations in production planning and the fact that the military might Germany was building up far exceeded that of her neighbors, were such that the defendants must also have known that the war machine was intended to carry out the notorious national policy of aggrandizement."

End quote.

To this the Defense would reply that the Prosecution has not offered any evidence bearing out the allegation that any of the defendants knew beyond the special field of the production, of which he was in charge, any data enabling him to survey the timing, acceleration and extent of the entire German production of strategic materials. Only in this case the defendants could have had the alleged knowledge to repeat the Prosecution's words: "of the fact that the military might Germany was building up far exceeded that of her neighbors". ^{The fact/} that, in reality, the military might of Germany did not by far exceed that of her neighbors, can therefore be left aside here.

Just as well the allegation of the Prosecution, that the dealings in all these products of I.G. mentioned on page 27 to page 41 of their Preliminary Trial Brief, Part I, were mainly with the military, has not been proved.

The Defense therefore would say that the rise of production of strategic materials all over Germany does not warrant any safe conclusion as to a guilty mind on the part of the defendants under Count I and V of the indictment.

The same observations apply just as well to the erection of the so-called stand-by plants and the stockpiling of strategic materials and they are equally valid as to the evidence produced by the Prosecution under the heading "Use of International Agreements to Weaken Germany's Potential Enemies". Granting that the alleged activities of Farben in this field really took place as described by the Prosecution, this again would not justify a conclusion beyond any reasonable doubt that the particular defendants connected therewith by the Prosecution knew that these measures were taken in preparation of an aggressive war. For it is an universally known fact that at times of political tension stand-by plants are being erected, strategic materials stockpiled and the exchange of technical informations between the industries of different countries is being subjected to certain restrictions. How could the defendants know that these measures ordered by the German government were steps on the road leading to an aggressive war and not merely measures of precaution in case of a defensive war.

The same holds true with regard to the evidence presented by the Prosecution under the heading "Propaganda, Intelligence, and Espionage Activities". If the knowledge of the Nazi program even in the view of the Prosecution is not equivalent to the knowledge of Hitler's aggressive plans required for a

conviction on a charge of a crime against peace, how can then a propaganda giving publicity to the Nazi program abroad justify any safe conclusion as to a guilty mind on the part of the defendants under Count I and V. Nor can such a conclusion be drawn from any of the alleged intelligence and espionage activities on the part of any of the defendants. These activities fall within the same category as the equipping of the Nazi war machine and therefore cannot be viewed exclusively in the light of the preparation of an aggressive war.

As to the evidence offered by the Prosecution under the heading "Protecting Farben's Empire and Expanding it through Plunder and Slavery as Part of the Preparation for and Waging of Aggressive Wars and Invasions", the entire evidence referring to the alleged camouflage activities of I.G. just as well does not justify the conclusion as to a knowledge of the defendants of Hitler's aggressive aims. Such activities, granting that they really took place, must be considered in the light of the political tension at the time of the Sudeten crisis when according to the Prosecution's view they were initiated. Therefore they can just as well be understood as measures of precaution in case that Germany should be involved in a defensive war.

Neither can the evidence offered by the Prosecution on the alleged acts of plunder and spoliation be considered a proof of the knowledge on the part of any of the defendants of Hitler's aggressive plans for the same reasons stated above with regard to the production of war material by Farben after the outbreak of the war. On page 72 of the Preliminary Trial Brief, Part I, the Pro-

secution say that said acts have been committed "in furtherance of the government program of integrating these industries into the German economy and using the resources of the conquered countries in waging each aggression and preparing for the next". Therefore the alleged acts of spoliation even if they really should have taken place, in this connection, namely, under Count I of the indictment, must be considered in the same light as the production of war material after the outbreak of the war in furthering Germany's war potential. If the IMT in this respect acquitted the defendant Speer as the responsible Minister for Armament and Munition on the ground that his activities as well as the production of war material by the German industry do not constitute a crime against peace, then the same must be said with regard to the alleged acts of spoliation having been committed by Farben in the Prosecution's view for the same purpose, namely, in furtherance of the German war potential.

The same applies to the last group of evidence offered by the Prosecution under Count I, namely the alleged participation by Farben in the so-called slave labor program. The purpose of these alleged activities is described by the Prosecution on page 72 of their Preliminary Trial Brief, part I, as follows, quote:

"The use of slave labor by Farben also had this double aspect. It not only enabled Farben to erect new plants and make huge profits, by increasing production, but the very erection of such plants and the increase of such production constituted a vital part of the preparation for and the waging of aggressions."

End quote.

Therefore the above observations made as to the alleged acts of spoliation apply also to Farben's alleged parti-

icipation in the slave labor program.

In reviewing therefore the entire evidence presented by the Prosecution under Count I, in the opinion of the Defense there can be but one conclusion that none of this evidence establishes beyond any reasonable doubt that the defendants had knowledge of Hitler's aggressive aims in the meaning of the IMT judgment.

On the basis of the above observations all of the defendants should be likewise acquitted of Count V of the indictment as we respectfully submit. For if the Prosecution has not established beyond any reasonable doubt a knowledge on the part of the defendants of Hitler's aggressive plans, then as a matter of course a conspiracy to this end is out of discussion. It is very significant in this connection that the Prosecution has not offered any direct evidence on this alleged conspiracy. In their Preliminary Trial Brief, Part V, not a single Exhibit is mentioned. The Prosecution only argue in a general and rather vague manner by making reference to decisions of the US Supreme Court in cases which have nothing to do with this case. Again the Prosecution entirely disregard what the IMT judgment stated as to the requirements for a charge of conspiracy in this respect. I may refer to the following quotation from the IMT judgment, book No. I, page 226:

"The Prosecution says, in effect, that any significant participation in the affairs of the Nazi Party or Government is evidence of a participation in a conspiracy that is in itself criminal. Conspiracy is not defined in the Charter. But in the opinion of the Tribunal the conspiracy must be clearly outlined in its criminal purpose. It must

not be too far removed from the time of decision and of action. The planning, to be criminal, must not rest merely on the declarations of a party program, such as are found in the 25 points of the Nazi Party, announced in 1920, or the political affirmations expressed in "Mein Kampf" in later years. The Tribunal must examine whether a concrete plan to wage war existed and determine the participants in that concrete plan."

"But the evidence establishes with certainty the existence of many separate plans rather than a conspiracy embracing them all."

End quote.

This argumentation in the IMT judgment follows the same line as the view-point taken by the IMT on the requirements of a knowledge of Hitler's aggressive aims. Again the IMT requires the proof of concrete specific facts, namely the participation in a concrete plan which is not too far removed from its execution. There is no such evidence offered by the Prosecution. In this connection I may refer to the decision of the US Supreme Court in the case "United States versus Faloone" quoted in the Prosecution's Preliminary Trial Brief, Part V, page 5 and following, according to which the Prosecution's proof in a conspiracy case apart from the conspirator's knowledge of the unlawful act of the other conspirator must include the proof of the intent to further, promote, and cooperate in said unlawful act. Again the Prosecution has offered no evidence on such intent on the part of the defendants.

In concluding my arguments on this subject I may quote from the grounds of the just mentioned decision the following significant passage which can be found in the Preliminary Trial Brief of the Prosecution, Part V, page 5 and following, quote:

"This difference is important for two purposes. One is for making certain that the seller knows the buyer's intended illegal use. The other is to show that by the sale he intends to further, promote and cooperate in it. This intent, when given effect by overt act, is the gist of conspiracy. While it is not identical with mere knowledge that another purposes unlawful action, it is not unrelated to such knowledge. Without the knowledge, the intent cannot exist. Furthermore, to establish the intent, the evidence of knowledge must be clear, not equivocal. This because charges of conspiracy are not to be made out by piling inference upon inference, thus fashioning what, in that case, was called a dragnet to draw in all substantive crimes."

End quote.

This is just what the Prosecution tried to do in this case when presenting their evidence. They were piling inference upon inference without establishing a clear and unequivocal evidence neither of the knowledge on the part of the defendants of specific aggressive plans of Hitler nor of an intent to further, promote and cooperate in such plans. In flat contradiction to the principles developed in the DMT judgment, the Prosecution advanced a vague and ambiguous theory, they compiled a mass of irrelevant evidence, thus obscuring the real issue under those counts of their indictment as it has been outlined - I may say - with wise foresight by the DMT and therefore all their endeavors -however elaborate they may be- are doomed to failure.

On these grounds I therefore respectfully move this Honorable Tribunal for an

acquittal of the defendants of the charges under
Count I and V of the indictment.

I shall pass on now with Your Honors permission to another general subject on which I am addressing this Tribunal again on behalf of all defendants, that is:

The general theory of the responsibility of the defendants
for the alleged crimes.

I think I am justified in saying that this is the key-problem of this trial and that the aspect under which this problem is viewed is decisive in assessing the personal responsibility of each defendant for any of the specific crimes alleged under the different counts of the Indictment. Therefore the question which -as I respectfully submit- Your Honors will have to ask yourselves later on in closed Court, namely which general theory of responsibility constitutes a legally sound basis, is of vital importance and should be considered most scrupulously.

In my Opening Statement for Paul Haefliger I said that, in reviewing the incredibly vast amount of evidence offered by the Prosecution on Farben's activities, there is one point which strikes me particularly: It is the incredibly small amount of evidence which the Prosecution has introduced on the personal responsibility of each defendant. At the time when I submitted this Opening Statement I was not yet familiar with Part VI of the Prosecution's Preliminary Trial Brief dealing with their general theory of responsibility. I therefore was particularly curious to learn whether this part of the Prosecution's Brief confirmed or upset my general impression, which I outlined in the just mentioned passage of my Opening Statement. And I must say that, after having read this part of the Prosecution's Brief, I was more than ever convinced that the Prosecution utterly failed in discharging the burden of proof which is upon them in this trial.

As already pointed out in this address it is up to the Prosecution to prove beyond any reasonable doubt the personal guilt of each defendant.

It is one of the leading principles of criminal law in all civilized countries that -as the IMT put it- criminal guilt is personal and that mass punishments must be avoided. Under this fundamental principle, which the IMT recognized even with regard to the Criminal Organizations dealt with in their judgment, it should be indisputably clear that in criminal law there is no collective guilt or responsibility deriving from the membership in a certain organization or body as for instance the board of directors of a company. It may be pointed out in this connection, that the IMT, by acquitting the former Reich Cabinet, being the incarnation of the political will of the German people, of the charge of a conspiracy, to commit crimes against peace, recognized this fact.

And yet the Prosecution, in advancing their general theory of responsibility in Part VI of their Preliminary Trial Brief, base their arguments on the assumption of a collective responsibility of all defendants resulting from their membership in the Farben-Vorstand respectively other boards. Thus the Prosecution substitute the burden of proof, which is upon them, of a personal guilt of each individual defendant, by submitting a theory which is a vague, unsupported by facts and inconsistent with the principles of justice and fairness as their theory regarding the state of mind of the defendants under Count I of the Indictment. Therefore also this theory of a collective responsibility of the defendants, deriving from their capacity as members of the Farben-Vorstand, which apparently is intended to serve as a dragnet to draw in all defendants, is doomed to failure.

At the beginning of Part VI of their Brief, the Prosecution argue that each of the defendants, apart from his industrial positions, held high political, civil and military positions in Germany and that by using these positions and their personal influence, the defendants participated in the crimes charged in Counts I, II, III and V of the Indictment. This

allegation, which I have dealt with already in my arguments under Count I of the Indictment, is not supported by any proof. To begin with, there is no proof of high political, civil and military positions. The Prosecution in this respect refer to their Document Books 11 and 56 containing the affidavits of all defendants on their positions. In reviewing these positions one cannot but admit that the Prosecution, by maintaining that the defendants held "high" political, civil and military positions, -to put it mildly- grossly overshot the mark. I would respectfully invite Your Honors to compare these official or semi-official positions of the defendants, which in most of the cases amounted to nothing more than a membership in the staff of one of the so-called Economic Groups or other administrative bodies of a medium level, which had no political or military character at all, with those positions held for instance by the defendants of the IMT trial, in order to understand properly the true significance of the influence which the defendants by virtue of these positions were able to exercise with a view of -as the Prosecution put it- "preparing Germany for war" and of participating in "the waging of war by Germany". And it is rather amusing to observe that the Prosecution itself admit the weakness of their position by saying on page 2 of Part VI of their Trial Brief, quote:

"We do not propose at this point to review the significance of each position held by each defendant. It is sufficient to note here that these positions, listed in Appendix "A" of the Indictment, enabled the defendants to participate in a substantial way in many activities vital to preparing Germany for war and for the waging of war by Germany during a period of twelve long years."

End quote.

Unfortunately the Defense cannot find any other passage neither in the Trial Brief nor in the Document Books of the

Prosecution, in which the significance of said positions of each defendant in connection with the alleged crimes is reviewed. The Document Book 11 and 66 of the Prosecution by no means speak for themselves.

On the basis of these observations the only possible conclusion therefore is that the Prosecution utterly failed to prove beyond reasonable doubt the personal guilt of each defendant by referring to those positions held by him. I do not wish to be hard on the Prosecution, but I must say that their line of argument under "A" of Part VI of their Preliminary Trial Brief is a classical example of a complete misconception of the burden of proof, which is upon the Prosecution regarding the guilt of a defendant in a criminal trial.

The same holds true when we come to consider the arguments of the Prosecution under "B" of Part VI of their Preliminary Trial Brief regarding the membership in the Vorstand.

On the basis of the above said observations that criminal guilt is personal and that therefore there does not exist a collective criminal responsibility, the fact of having been a member of the Farben-Vorstand or of any of its Committees alone never can be regarded a sufficient proof of the criminal guilt of any of such members under the different Counts of the Indictment. And yet the Prosecution maintain this.

In substance the Prosecution's theory in this respect is the following:

The Vorstand of Farben is alleged to have initiated, approved and ratified a policy and a program, the execution of which extended over a relatively long period of years and which consisted of

- (a) preparing Germany for an aggressive war and participating in the waging of such war by Germany;

- (b) plundering the chemical industries throughout Europe;
- (c) using slave labor;
- (d) ill-treatment of slave labor^{by} including medical experiments on concentration camp inmates and the furnishing of poison gas for their extermination.

In other words, the Prosecution alleges that the Farben-Vorstand initiated, approved and ratified a general policy covering all crimes charged under the Counts I, II and III of the Indictment, and that all defendants joined in such initiating and approving on account of their membership in said Vorstand.

Then the Prosecution goes on to say on page 3 of Part VI of their Brief, quote:

"The fact that any individual Vorstand-member may not have known of some particular detail involved in the carrying out of a program which he had initiated, supported or approved, is unimportant. It is certainly not the position of the Prosecution that, in a giant concern of this size, any person could know all the detailed ramifications of the execution of all adopted policies. It may be that on occasion a specific act was taken in the carrying out of a policy approved by the Vorstand which was not contemplated in the original program. But, where, as here, the execution of any specific program extends over a relatively long period of time, those who are responsible for initiating that program and for carrying it out cannot claim that they did not know what was happening during its execution.... Those persons who were legally charged with running, and who did run, this concern, cannot escape liability by any alleged failure to have found out the main consequences of the policies they set in motion or subsequently approved."

End quote.

On page 9 of their respective Brief the Prosecution goes on to say, quote:

"The fact that a defendant was a member of the Vorstand of Farben is of vital significance in two respects. In the first place, it meant that he, as one of the persons on the managing board of directors, substantially participated in the activities carried on through the instrumentality of Farben; in the second place, it meant that he knew of any matter of any importance in the affairs of Farben, even though he may not have known (although he could have found out with the slightest investigation) of many details in connection with the administration of such matters."

End quote.

It is therefore the position of the Prosecution that, in order to convict the defendants under the various Counts of the Indictment, it is not necessary to prove that each defendant had knowledge of each specific crime covered by the Indictment respectively of any details of such crime, and that each defendant actively participated in the commission of such crime, because all these alleged crimes were committed -as the Prosecution put it- in execution of an alleged general policy and program initiated and approved by the defendants. Accordingly the Prosecution do not attach any weight to the fact that in the Indictment certain individual defendants were connected with certain specific activities charged under Count I, II and III and allegedly took an active part therein.

In reviewing this theory of the Prosecution, which I just took the liberty to outline, there can be in my humble opinion not the slightest doubt, that the Prosecution's position is in flat contradiction to the above mentioned principle that criminal guilt is personal, that there exists no collective criminal guilt and that therefore it is up to the Prosecution to prove beyond any reasonable doubt on the part of each defendant his personal participation in and knowledge of each specific crime charged under the different Counts of the Indictment.

The following analysis of the Prosecution's theory will show the correctness of this conclusion.

To begin with, the Prosecution has failed to prove the basis of their theory, namely the initiating, approving and ratifying of the alleged general policy of the Vorstand covering the alleged crimes under the different Counts of the Indictment.

In the first part of my address dealing with Count I of the Indictment, I have already pointed out that the evidence

offered by the Prosecution does not bear out the allegation that the Farben-Vorstand initiated, approved and ratified a policy or program to commit crimes against peace.

The same holds true with regard to Count II and III. The Prosecution has not introduced any evidence proving beyond reasonable doubt that the Vorstand of Farben initiated, approved and ratified a policy and program of plundering the chemical industries throughout Europe, of using slave labor, ill-treating slave laborers, carrying out medical experiments on concentration camp inmates and furnishing poison gas for their extermination.

Therefore the very basis of the Prosecution's conception of the responsibility of the defendants has not been proved which inevitably results in upsetting the whole theory.

But apart from that the Prosecution's conception in substance is not a theory of criminal guilt under Count I, II and III of the Indictment, but -in the form advanced by the Prosecution- rather a theory of criminal guilt under the conspiracy charge. This becomes sufficiently clear by referring to the observations made by the Prosecution on page 3 and 4 of Part V of their Preliminary Trial Brief dealing with the Common Plan or Conspiracy, quote:

"The nature of this conspiracy is that these defendants over a period of years, planned and conspired among themselves and with other persons to carry on the activities described in Parts I, II and III of this Brief These activities were not isolated acts of individual defendants. On the contrary, such activities were part of a plan and program which had its roots and took shape at meetings and conferences of the defendants over a period of years - in the Vorstand, in the Technical Committee, in the Commercial Committee; in other committees and agencies of Farben; in the exchange of correspondence, memoranda and reports; and through less formal meetings of the minds of the defendants."

End quote.

These observations of the Prosecution made in support of their conspiracy charge correspond in substance to those forming the basis of their general theory of responsibility advanced in Part VI of their Preliminary Trial Brief, which I quoted a few minutes ago.

Now as to the conspiracy charge regarding crimes against peace, it has been shown already that the evidence offered by the Prosecution does not support this charge.

As to the crimes charged under Count II and III of the Indictment, according to the ruling of this Tribunal no conspiracy can be assumed from a legal point of view.

It follows therefrom that again the entire basis of the Prosecution's theory of the responsibility of the defendants arising from the alleged criminal policy of the Farben-Vorstand is upset as the conspiracy charge with reference to Count I of the Indictment has not been proved, and a conspiracy charge as to Count II and III of the Indictment legally does not exist.

Apart from these general view-points which clearly show the utter unsoundness of the Prosecution's theory, the Defense would respectfully invite now Your Honors to consider the following facts in the light of which it will appear, that the only legally sound approach to the general problem of responsibility is on the basis of dividing the responsibility among the different members of the Vorstand in accordance with the special tasks, which were assigned to them, in other words, on the basis of the principle of decentralization, which was adopted within the framework of Farben and which has been repeatedly quoted in the course of this trial.

As I pointed out already in my Opening Statement for the defendant Haeffliger, the actual facts of the position of a defendant and the actual scope of his tasks alone count when assessing his criminal responsibility for activities which fell either within or outside the scope of the business of which he was in charge. It is the position of the Defense that, as far as criminal law is concerned, only a conception of responsibility based on such facts can be considered a legally sound theory to start on in assessing the guilt of a defendant. On the basis of the evidence introduced by the Defense these facts are the following:

I.G. Farben -the English translation of "I.G." being "community of interests"- originated from a merger of several independent chemical firms of major importance. This merger came about with reluctance, since the managing directors of the various firms were afraid of losing their independence and autonomy. These misgivings were taken into consideration when framing the organization of the new concern I.G.Farben. The result was, that on the one hand all the managing directors of the various firms were taken over as members of the Vorstand of the new concern, and on the other hand the principle of decentralization was adopted within the organization of the new concern, in order to preserve - as much as it was possible under the circumstances the former independence and autonomy of those managing directors, who were in charge of the firms which were merged into I.G.Farben. This resulted in a far-reaching dividing of working-fields and of responsibilities among the different Vorstand-members, who in the special field, which they were in charge of, acted in a manner not dependent on the consent and cooperation of the other Vorstand-members as far as no particularly important matters were concerned, which

went beyond the framework of the ordinary business conducted by them. Within these limitations therefore each Vorstand-member was independent in his working-field, and the practice developed that no other Vorstand-member ever interfered with his conduct of business. This practice was not only founded on the historic facts prior to the merger of I.G. which I adduced a few moments ago, but was justified also by highly practical reasons and necessities which left no other choice, namely:

- (1) the gigantic and ever-growing scale of business conducted by I.G., which is not contested even by the Prosecution and of which the evidence gives a vivid picture; as an example I may refer to the chart introduced by the Defense of v.Knirien in their Document Book V on page 315, showing the annual turnover of I.G., which increased from 1.029 millions RM in 1926 to 2.904 millions RM in 1942;
- (2) hand in hand herewith the ever-growing staff of I.G. Again I may refer to said chart showing an increase of the staff from 93,742 members in 1926 to 187,700 in 1942;
- (3) as contrasted herewith the ever-decreasing number of the Vorstand-members which, according to the just mentioned chart, dropped from 79 in 1926 to ⁵²22 members in 1932, and from then onwards gradually decreased to 23 members in 1942.

It follows therefrom that, as also shown by the aforementioned chart,

to each member of the Farben-Vorstand

in 1926 fell a turnover of 13 mill.RM and a staff of 1187 members,
in 1932 a turnover of 26 mill.RM and a staff of 1900 members,
in 1936 a turnover of 39 mill.RM and a staff of 3,332 members,
in 1942 a turnover of 126 mill.RM and a staff of 8161 members.

This would mean that the respective figures of annual turnover and staff of I.G.Farben per member of Vorstand, as compared with
had
1926, doubled by 1932, trebled by 1936, and increased tenfold by 1942.

These figures permit but one indisputable conclusion: The number of Vorstands-members not keeping pace with the ever-growing turnover and staff of I.G.Farben, but, on the contrary, gradually decreasing, it was actually and definitely impossible for any Vorstand-member and certainly far beyond his working-capacity, to attend to all matters of the conduct of business within this -as the Prosecution styles it- giant concern. Therefore a distribution of working-fields and a dividing of responsibilities among different Vorstand-members simply had to take place. It was a cogent necessity. There was no other way. This necessity is furthermore underlined by the fact that, in view of the great variety of products manufactured and sold by I.G., necessarily a high degree of specialising developed among the Vorstand-members, since it was not possible to conduct the business of a specific field of production or sale without a highly specialised knowledge. It results therefrom that the different Vorstand-members not only for physical reasons arising from their working-capacity, but also for lack of special knowledge, were not in the position to judge properly the activities within a certain working-field of another Vorstand-member and therefore had to confine themselves to their own working-field.

This dividing of working-fields and responsibilities resulted as a matter of actual practice in a considerable autonomy of the different plant and sales combines of I.G.Farben. Within these combines a further specialization and dividing of responsibilities took place according to the different products of these combines which resulted in the setting-up of special -mostly technical- committees and sub-committees, in which all matters before reaching larger committees as the TEA and in the last order the Vorstand, were thoroughly dealt with. Even the

plants themselves within the different plant or work combines had a certain autonomy, especially in questions of employment and treatment of laborers, for which the local leaders of each plant were responsible under the German Law Concerning National Labor hereinafter discussed.

All the facts which I just took the liberty to outline, are confirmed by a considerable amount of evidence introduced by the Defense. I may point out in this respect in particular to the affidavits of the former Vorstand-members Dr. Jacobi (Defense Exhibit 171, Document Book v.Knieriem No.V, page 307) and Dr. Pistor (Oster Exhibit 19, Document Book I, page 42), who are not accused in this trial, and to the affidavit of the defendant v.Knieriem (Defense Exhibit 170, Document Book v.Knieriem No.V, page 292), as well as to the testimony of various other defendants and witnesses on this subject.

It follows from the foregoing observations, that within the framework of I.G.Farben there existed an individual responsibility of the different Vorstand-members for the business of their special working-field and that therefore the principle of decentralization had materialized in a substantial degree. This however was not only a matter of actual practice, but also in full keeping with the requirements not only of the By-Laws of I.G., but also of the relevant German law.

The By-Laws of I.G.Farben of 1928, which significantly have not been offered in evidence by the Prosecution, provided in Art. 1, para 2, quote:

"Where certain tasks have been assigned to Vorstand-members, they shall be attended to by them independently and under their full and exclusive responsibility."

End quote.

These By-Laws, which have been offered in evidence as Defense Exhibit 169 (Document Book v.Knieriem No.IV, page 261) then go on

to state that, as an exception from this principle of individual responsibility, the Vorstand-members may not render independent decisions in general and important matters.

The By-Laws of 1938, offered in evidence by the Prosecution as Exhibit 337, Document Book 12, page 177, although not containing an explicit provision to this effect, nevertheless implicitly accept the principle of the individual responsibility of the Vorstand-members which, in the meantime, owing to the size of the enterprise had become a matter of course. This follows from para 2 and 3 of the By-Laws providing, quote:

"It is further the duty of every Vorstand-member to call attention to matters, the knowledge of which is of importance to the other Vorstand-members, especially as it may facilitate for the latter the overall appraisal of the entire business

The various Vorstand-members shall as a rule submit particularly important matters, which go beyond the framework of ordinary business conducted, to the full Vorstand."

End quote.

These provisions, as a matter of course, presuppose an individual responsibility of Vorstand-members for matters which were not reported as particularly important to the full Vorstand.

The principle of decentralized responsibility however is not only in full keeping with the By-Laws of I.G. Farben, but also with the provisions of the relevant German law.

Reference in this respect is made to the legal opinion of a well known expert in this special field of law, Dr. Walter Schmidt, submitted as Defense Exhibit 280, American Document 39. I.G. Farben being organized under the German law, there can be no question that the legal aspect of the responsibility of a Vorstand-member must be derived from the German law as well, namely from the Stock Corporation Law of 30th January 1937 and -as far as labor questions are concerned- from the Law Concern-

ing National Labor of 20th January 1934. The Prosecution has recognized this fact by offering in evidence extracts from both laws. I may refer to Prosecution Exhibit 389, Document Book 15, page 50, and Exhibit 393, Document Book 15, page 127.

The Stock Corporation Law provides in Art. 71, para (2) expressly, quote:

"In case the Vorstand consists of several members only all Vorstand-members jointly are entitled to make declarations and to act for the corporations, unless the articles of incorporation stipulate otherwise. The Vorstand can authorize individual Vorstand-members to transact certain business or certain kinds of business....."

End quote.

Hereby the principle of decentralization and individual responsibility is acknowledged by the relevant law.

The same holds true with regard to labor questions under the Law Concerning National Labor which provides in Art.2, quote:

"The leader of the plant makes the decisions for the employees and laborers in all matters concerning the enterprise, as far as they are regulated by this law. He is responsible for the well-being of the employees and laborers."

End quote.

and in Art.3, quote:

"In the case of legal persons and personal groups the legal representatives will be the leaders of the enterprise.

The enterpriser or in the case of legal persons or personal groups the legal representatives can appoint a person who participates in the management of the enterprise in a responsible capacity as their deputy. This must be done, if they do not direct the plant themselves."

End quote.

Therefore the German law of that time prescribed the appointment of a special local deputy plant leader, who was responsible for all labor questions in case the legal representatives of a company did not direct the plant themselves.

This again is a legal confirmation of a policy which I.G.Farben had followed already before said law came into operation, namely the appointment of local plant leaders who were responsible for labor questions affecting their plant, especially for the employment and treatment of laborers. Thus it is clear that the Vorstand of I.G.Farben as such under the relevant German law had no responsibility for labor questions concerning a particular plant, a fact, which may be of importance under Count III of the Indictment, if, contrary to the opinion of the Defense, the commission of a crime in any of the Farben plants should be assumed.

We have thus ascertained that the principle of the individual responsibility of Farben Vorstand-members, adopted as a matter of actual practice for the scope of their working-field with the exception of particularly important matters, if and insofar they were reported to the full Vorstand, was in keeping both with the Farben By-Laws and the relevant German laws. It is therefore indisputably clear, that within these limitations a Vorstand-member alone bore the responsibility under the By-Laws of I.G. as well as under the German civil law. His individual responsibility therefore precluded any joint responsibility of the other Vorstand-members, with the exception of the case that the other Vorstand-members violated their duty of supervision, of which I shall treat later on.

It goes without saying that the same holds true with regard to the criminal responsibility of a Vorstand-member for any such activity within the scope of his working-field. For if the Civil Law recognizes the individual responsibility of a Vorstand-member in preclusion of a joint responsibility of the others, then, as a matter of course, the situation cannot be

different under the Criminal Law on the basis of the above stated generally recognised principle, that criminal guilt is personal.

Bearing in mind what has been said about the principle of individual responsibility of each Vorstand-member of Farben for his special working field, the Prosecution therefore, in order to discharge their burden of proof, have to establish on the part of each individual defendant -and not, as they have done hitherto, in a more or less global manner- that he personally participated in a specific crime mentioned in the Indictment, and that he had knowledge of all details enabling him to judge the criminal character of the activity involved, as required by the law of all civilised nations, in order to establish a guilty mind on the part of a defendant.

In flat contradiction to these principles derived from the aforementioned facts, the Prosecution in Part VI of their Preliminary Trial Brief argue on the basis of global and vague assumptions. They contend that through the instrumentality of the various committees and sub-commissions of I.G., the entire Vorstand was well informed about all important matters. That is nothing but an assumption and no proof of participation or guilt. The Defense has offered evidence on the fact that ^{and General Staff Committee} the reports in the Vorstand and ISA were concise and did not go into details, because all matters were thoroughly discussed and dealt with in the various sub-committees, and because the other Vorstand-members relied on the special knowledge and expert opinion of the reporting Vorstand-member. Reference is once more made to the afore-mentioned affidavits of the former Vorstand-members Dr. Jacobi and Dr. Pieter, and of the defendant Dr. v. Enieriem. The Prosecution entirely disregard

the purpose of such reports which, according to the Bye-Laws 1938, Art. 2, amounted to the following, quote:

"Apart from this it is the duty of each Vorstand-member to submit to the body such matters, the knowledge of which may be assumed to be a matter of importance to the other Vorstand-members, especially such matters as would render it easier for them to survey business transactions as a whole."

End quote.

Therefore these reports were intended to show only such main points which were essential to convey a survey of the business situation as a whole. The Vorstand and such large Committees as the TRA and the K.A. were only interested to learn whether a transaction of major importance affected in any way the interests either of other Sparten or sales combines or of I.G. as a whole. Therefore details which had no bearing on such interests as a matter of course were not included in these reports, this all the more as the meetings of the Vorstand and TRA and Commercial Committee took place only about every two months and were of a short duration with a long list of agenda to be dealt with; for mere reasons of time therefore there was no possibility to go into details.

This is one more typical instance showing that the Prosecution in arguing their case, entirely disregard the actual facts and especially the situation at a meeting of the Vorstand of such a giant enterprise. Has the Prosecution really introduced any evidence bearing out the contention that, to take an example, in submitting the credits for Auschwitz to the TRA or Vorstand, the reporting Vorstand-member mentioned the employment or treatment of concentration camp inmates, so that the other Vorstand-members therefrom were able to gather the impression that these camp inmates were either employed exclusively upon the initiative ^{for purposes/} of I.G./outside the scope of government production orders, or ill-^{by I.G.-personnel/} treated, if we assume for argument's sake that these allegations of

the Prosecution are true? Or, to take another example, has the Prosecution offered any evidence on the fact, that a Vorstand-member reporting to his colleagues on a specific transaction with foreign partners, which the Prosecution styles as an act of spoliation, brought to the knowledge of his colleagues such details of said transaction as to warrant the conclusion, that this transaction was in violation of any rules of the Hague Convention? It is the position of the Defense, that no such evidence has been offered by the Prosecution.

[REDACTED]

[REDACTED]

[REDACTED]

The Prosecution entirely disregards the fact that all the numerous minor committees and sub-commissions of I.G. were set up for the very reason to handle all the details of a certain production scheme or business transaction, for which the Vorstand-member being in charge of the particular working-field was responsible on account of the afore-mentioned principle of decentralization, and that this Vorstand-member therefore did not and was not bound by the By-laws to report said details to the full Vorstand or any major committee as the TEI or the Commercial Committee, which served only the exchange of informations on points of a general interest affecting other Spartan or sales combines or the enterprise of I.G. as a whole.

Therefore contrary to the opinion of the Prosecution as expressed in Part VI of their Preliminary Trial Brief, all these committees and sub-commissions of I.G. were not intended to supply the Vorstand with full informations on any details of a production scheme or business transaction, but on the contrary to discharge the joint Vorstand of the responsibility to look after all those details.

In fact the Prosecution on page 9 of their Preliminary Trial Brief, Part VI, more or less admits this fact by stating, quote:

"In the second place it -namely the fact that a defendant was a member of the Vorstand- meant that he knew of any matter of any importance in the affairs of Farben, even though he may not have known (although he could have found out with the slightest investigation) of many details in connection with the administration of such matters."

End quote.

If therefore, according to the own statement of the Prosecution, a defendant did not know of many details in connection with the administration of matters coming under the jurisdiction of another defendant, then he cannot be found guilty on a charge of such gravity as raised in this indictment, because the Prosecution failed to prove beyond reasonable doubt, that he was familiar with all particulars enabling him to judge the criminal character of the activity involved.

Now the Prosecution in the above quoted passage by using the words, quote:

"..... although he could have found out with the slightest investigation"

End quote,

touch on a problem which has been a subject of thorough discussions in legal literature and court judgments of all civilized countries, the problem of a crime committed by omission.

The Criminal Law of all civilized nations provides for that a crime can either be committed by way of a positive activity or conduct - or by way of omission, that is in contravention of a duty to act and hereby to prevent the criminal effect.

As to the crime committed by way of positive activity, there is nothing much to be said from a legal point of view.

It only should be stressed once more with reference to the degrees of participation mentioned in Art. II, para 2, of Control Council Law No. 10 -its applicability being left aside for the moment- that knowledge alone of the criminal activities of another defendant is not sufficient to convict a defendant on charges of this nature, but that apart from knowledge there must be established some sort of a positive conduct on his part. I may once more quote the following significant passage from the judgment of the Military Tribunal Nr. II in Case Nr. 4 versus Pohl and others (Transcript page 8111), giving a clear interpretation of the afore-mentioned provisions of Control Council Law No. 10, quote :

"The only consent claimed arises from imputed knowledge - nothing more. But the phrase "being connected with" a crime means something more than being in the same building or even being in the same organization with the principals or accessories. The International Military Tribunal recognized this fact when they placed definite limitations on criminality arising from membership in certain organizations. There is an element of positive conduct implicit in the word "consent". Certainly, as used in the ordinance it means something more than "not dissenting."

End quote.

As to the commission of a crime by way of omission, it is acknowledged in the Criminal Law of all countries, that, in order to convict a person under this aspect, there must be established on his part beyond reasonable doubt a duty to act, which has been violated by him. Said duty may be derived either from the law or from a contract resp. agreement or from an activity of the defendant prior to the commission of the crime.

I may refer in this respect to the legal opinion of the well-known German Professor of Criminal Law at the University of Munich, Dr. Edmund Mezger, which has been introduced as Defense Exhibit 281/282, Extrinsic Document 40/41, and which deals with the legal prerequisites of the criminal responsibility

of managing directors of a Stock Corporation.

I do not propose to touch here on the question discussed in said opinion, whether the activities of these defendants should be adjudged under the German Penal Law or under rules derived from the Continental Law of Europe or from a still broader System of International Law. Though the Defense maintain that the German law should be applicable for the reasons stated in the afore-mentioned opinion, this is of no decisive importance as to the question to be discussed here, namely the pre-requisites of a crime committed by way of omission. For the fact that such crime presupposes a duty to act, which has been violated, is acknowledged by the Criminal Law of all civilized countries.

Furthermore it should be equally clear that the question, whether and to which extent a duty to act existed on the part of these defendants, can be answered exclusively by referring to the theories developed by the German Commercial Law and court-practice under the system of which I.G.Farben was organized and according to which therefore alone the duty of the defendants to act and intervene can be determined.

Such duty to act in the case of these defendants amounts to the duty to supervise the activities of another Vorstand-member, if the latter, as it has been the practice with I.G.Farben, had been assigned a special working-field for which he was responsible.

I may again refer to the legal opinion of Dr. Walter Schmidt, Defense Exhibit 280, Knieriem Document 39, and to the affidavit of the defendant v.Knieriem, Defense Exhibit 170, Knieriem Document 34, in which the range of said duty, to supervise the activities of a Vorstand-member by his colleagues is

thoroughly discussed. I may summarize these observations as follows:

If a Vorstand-member, as already shown, was not directly responsible for the activities of his colleague within the latter's special working-field, he nevertheless had the obligation not to leave the business scope of the other Vorstand-members altogether out of sight.

This however did not imply his duty to interfere with the conduct of business within the working-field of his colleagues.

Therefore the Vorstand-members were not liable to supervise the activities of any one of their colleagues by keeping a constant check on these activities.

Such interference and constant check -as a matter of actual practice in I.G.Farben- neither occurred nor even was permitted. The reasons are obvious.

On the one hand such a check in view of the giant size of Farben's business and the comparatively small number of Vorstand-members would have been definitely beyond the physical working-capacity of any one of the Vorstand-members.

On the other hand, as already mentioned, the great variety of products manufactured and sold by Farben required a highly specialized knowledge, so that a Vorstand-member, not being a specialist outside his own working-field, also for this reason was not in the position to check effectively on the activities of another Vorstand-member.

Last not least it was the practice in the I.G., in selecting leading personalities, particularly Vorstand-members, to demand the highest standards in regard to character and professional qualifications with the result that, until such time

he had actual proof to the contrary, each Vorstand-member was assured that his colleagues were absolutely equal to their tasks and that they would perform them correctly, in full keeping with the requirements of any law whatsoever and to the best of their abilities.

The duty of supervision not amounting to a constant check on the activities of each Vorstand-member for the just stated reasons therefore was confined to a general line. The essential factor was that the attention of the Vorstand-members to the other members' activities was directed to satisfying oneself, whether or not a particular colleague was generally managing his affairs according to recognized practices and whether, on the whole, he was equal to his tasks or fundamentally failing in this respect -according to the well-established principle: "men not measures".

On the basis of these observations, which are in full keeping both with the German Commercial Law as well as the practice adopted in this respect in I.G.Farben, the duty of supervision of a Vorstand-member did not imply the obligation to find out on his own initiative without any reasonable ground of suspicion, what another Vorstand-member was doing in his particular domain or whether or not he had failed to submit some points to the full Vorstand under the rules of the By-Laws.

Only in cases where some reasonably reliable information reached the ears of some Vorstand-member or where he had reasonable grounds for suspicion, that a colleague was not attending to the affairs of his special domain as he should, said Vorstand-member had the duty to investigate the matter and to take the appropriate steps.

It follows therefrom that a duty to act and intervene as a matter of actual practice as well as of law arose only in case a report by a Vorstand-member to one of the Committees or to the full Vorstand gave some reasonable ground of suspicion on the part of the other Vorstand-members, as to whether the reporting colleague in general or in a particular case was living up to his tasks.

After having outlined now the range and scope of the duty of supervision of the Vorstand-members with regard to the activities of their colleagues under the aspect of the actual practice and the Civil Law, I may turn now to the conclusions to be drawn therefrom with regard to the criminal responsibility of Vorstand-members violating this duty of supervision.

Translated into the language of Criminal Law, this duty would imply the obligation to act and intervene, if a report by a Vorstand-member to any of the Committees or to the full Vorstand caused some reasonable ground of suspicion on the part of the other Vorstand-member, that his colleague was involved in some criminal and unlawful activity.

It follows therefrom that none of the defendants under the rules of Criminal Law was liable to investigate any activities of his colleagues as to their lawfulness without a reasonable ground for suspicion, deriving from a report of said colleague.

Therefore in order to convict any of the defendants under the aspect of a crime committed by way of omission, that is by way of violating his duty of supervision, it must be established in the first place beyond reasonable doubt, that this defendant, on account of the knowledge he had of a criminal activity of another defendant, had a reasonable ground of suspicion obliging him to investigate same and to intervene.

This however is not yet sufficient. As under the Criminal Law of all civilized countries the chain of causality must be proved, the Prosecution furthermore is bound to establish that, in case the defendant had performed his duty of supervision and ^{had} intervened, the criminal effect, caused by the activity of his colleague, would have been avoided. This implies three important conclusions:

- One: If the criminal effect had been already brought about before the defendant was given a reasonable ground of suspicion, he cannot be convicted;
- Two: The same holds true if his intervention would not have resulted in preventing the criminal effect, because it otherwise would have been just as well enforced by the Nazi authorities;
- Three: The same holds true if the intervention of the defendant in view of his actual position in the Vorstand would have been without any result.

After having established a violation of a duty to act and intervene, that is an omission and an interdependency of this omission and the criminal effect, the Prosecution last not least has to prove the guilty mind on the part of the defendant with regard to said omission. And here we have a fundamental difference between the Civil and the Criminal Law, at least as far as charges of this nature are concerned.

Whereas under the Civil Law a simple negligence in violating the duty of supervision would be a sufficient ground for an action for damages against such a defendant, on the charges pending before this Tribunal a defendant can be convicted only if he had deliberately and wilfully violated said duty. Therefore a defendant cannot be convicted, if he either on account of negligence overlooked a ground, which should have aroused his suspicion, or if he acted carelessly by not investigating the matter, because on account of

negligence he assumed that the criminal effect after all would not come about.

A deliberate and wilful violation of the duty to act and intervene implies therefore, that the defendant knew that the criminal effect would come about in case he -the defendant- did not intervene or at least, that the defendant considered the possibility of such effect - and that he approved thereof. Therefore in this connection a "closing the eyes" or "turning away" -to use two phrases popular with the Prosecution- is relevant only, if the defendant had realized at least the possibility of the criminal effect and of preventing it by his intervening, and if furthermore from his behaviour the indisputable conclusion may be drawn, that he had approved of said effect. Otherwise no deliberate and wilful omission can be established.

All these prerequisites of a guilty mind on the part of an individual defendant must therefore be proved beyond reasonable doubt by the Prosecution, if any of the defendants should be convicted on the ground of not having intervened in a case of a criminal activity of any other defendant, granting of course, that such activity has been proved as well.

It is the position of the Defense, that the Prosecution has not established any of the afore-mentioned prerequisites of a crime committed by way of omission with regard to any of the defendants.

A survey of this nature would not be complete without mentioning one important factor, which is restricting the responsibility of the defendants as Vorstand-members both in the case of an alleged crime committed by positive activity or by omission. I am alluding to the plea of necessity, which must be just as well considered one of the fundamental

principles of the Criminal Law of all civilized nations precluding the guilty mind of a defendant.

The nature of the plea of necessity and the underlying principle to this defense in my humble opinion cannot be styled better and more precisely than in the following passages from Wharton's "Criminal Law", Volume I, Chapter VII, subdivision 126, and Chapter XIII, subdivision 384, quote:

"Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportioned to the evil."

"Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind. When a man is absolutely, by natural necessity, forced, his will does not go along with the act."

End quote.

Now it has been argued by the Prosecution that, according to the provision of Art. II, para 4, subdivision (b), of Control Council Law No. 10, the fact that any person acted pursuant to the order of his government or of a superior does not free him from responsibility for a crime.

It is the position of the Defense however, that the afore-mentioned provision, being opposed only to the plea of superior order, cannot supersede the plea of necessity, being a fundamental principle of the Criminal Law of all civilized nations. Again I may refer to Wharton's "Criminal Law", which contains in Volume I, Chapter VII, subdivision 126, the following significant statement, quote:

"The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supersedes rules, and whatever is reasonable and just in such cases is likewise legal."

End quote.

It follows therefrom, that necessity as a plea of defense supersedes also the afore-mentioned provision of Control Council Law Nr. 10, and it is very significant in this respect that the Tribunal Nr. IV in Case Nr. 5 versus Flick and others assumed the same viewpoint. I may quote from the grounds of the judgment the following passage (Transcript page 10992), quote:

"In our opinion, it is not intended that these provisions are to be employed to deprive a defendant of the defense of necessity under such circumstances as obtained in this case This Tribunal might be reproached for wreaking vengeance rather than administering justice if it were to declare as unavailable to defendants the defense of necessity here urged in their behalf. This principle has had wide acceptance in American and English Courts and is recognized elsewhere."

End quote.

On the basis of the afore-mentioned observations the plea of necessity requires that a defendant acted under a "clear and present danger". It is the position of the Defense, that the peculiar circumstances, under which all of the defendants lived in the former Reich after the Nazis came to power, constitute by themselves such a "clear and present danger", and that therefore the defendants on the ground of said peculiar circumstances may advance the plea of necessity in all cases where the defendants by omitting a specific activity or by interfering with the activity of some other person or group of persons would have been in clear opposition to measures or a program adopted by the Nazi authorities.

This particularly holds true with regard to the so-called Nazi slave labor program with all its consequences, but can just as well be set forth with regard to other activities covered by ~~the~~ other Counts of the Indictment. Again I may refer in this respect to the judgment in the Flick case, because in my opinion the peculiar circumstances,

under which the German industrialists including these defendants lived at that time in Germany, cannot be styled more emphatically than in the following passage on page 10993 and 10994 of the Transcript, quote:

"We have already discussed the Reich reign of terror. The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always "present", ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees."

End quote.

After having covered now to the best of my ability the field of the general theory of responsibility, I may now for Your Honors' convenience briefly summarize my observations as follows:

One: Under the rules of Criminal Law there is no collective responsibility.

Criminal guilt can only be personal.

Two: In the case of major German Stock Corporations having on their board of directors several Vorstand-members a dividing of working-fields and responsibilities among the various Vorstand-members was customary and admissible both as a matter of actual practice and of law.

Three: In I.G.Farben such dividing of working-fields and responsibilities was carried through in a considerable degree owing to the peculiar circumstances which I took the liberty to outline to Your Honors.

Four: There existed no duty on the part of the defendants as a matter of law and of actual practice, to check constantly without any reasonable ground on the activities of a colleague. In view of the fact, that it was the practice in I.G.Farben, in selecting leading personalities, to demand the highest standards in regard to character and professional qualifications, each defendant could rely on the correct conduct of business by his colleagues. On the other hand each defendant was preoccupied to the limit of his working-capacity by the special tasks assigned to him and therefore in the first place had to see to it, that his own work was done in a proper and orderly way.

Five: Also as far as reports and decisions in the full Vorstand or in the TEA or Commercial Committee were concerned, only those points were relevant for those defendants, who were not familiar with the subject, which appeared in the report or were discussed. Moreover it had to be assumed that the experienced knowledge of the reporting Vorstand-member and his familiarity with the issue concerned was superior to that of his colleagues.

Six: The Prosecution has not established, that any of the defendants in any particular case had a reasonable ground, deriving either from any peculiar circumstances of the case or from the personality of another Vorstand-member, to consider objectionable any specific activities of said colleague coming now under one of the Counts

of this Indictment and to investigate these activities accordingly. Therefore in no case a violation of the duty to supervise and intervene, and consequently no "closing the eyes" or "turning away" has been established by the Prosecution.

Seven: The crimes covered by this Indictment can be committed only deliberately and wilfully and not out of negligence. Therefore a "closing the eyes" or "turning away" could be punishable only if the defendant had realized at least the possibility of a criminal effect and of preventing it by his intervening and if furthermore he had approved of said effect.

Eight: The defendants may advance the plea of necessity in all cases where by omitting a specific activity or by interfering with such activity, they would have been in clear opposition to measures of the Nazi authorities.

therefore/
Nine: It is ~~the~~ position of the Defense that even if -contrary to their opinion- certain activities of one or several defendants directly involved therein should be considered criminal, in none of such cases a criminal responsibility of the other defendants can be assumed on the basis of all the afore-mentioned observations.

This, Your Honors, brings me to the end of my Closing Statement covering the general subjects of the relevancy of the Prosecution's evidence under Count I and V and the general theory of responsibility.

I am afraid that I took up Your Honors' time by indulging in rather extensive legal arguments. But I thought it fitting and proper to do so to the best of my abilities, as in my humble opinion the incredibly vast amount of evidence, which kept pouring in during these past months, at times nearly engulfed certain simple and basic legal rules, long ago conceived by men free from feelings of vengeance and dedicated to that noble cause, which so frequently has been abused, for which so many gave the last full measure of devotion and which alone may raise in us the hope that, after all, human dignity will not perish from the earth and this harassed world of ours will have a new birth of freedom -
the cause of justice.

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Case 6
Defense

CLOSING BRIEF
on
"Fundamental Legal Issues"

submitted

on behalf of all defendants
in Case No. VI (I.G. Farben)

by

Professor Dr. Eduard WÄHL

Special Counsel for all defendants.

Wahl



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I n t r o d u c t i o n .

Sec.1. Remarks on the structure and the preferential treatment of questions of substantive law.—The following brief on legal problems cannot be expected to deal exhaustively with the legal aspects of this trial. It is far too complicated a phenomenon for that, even from the legal point of view; there are too many subtle differences between the cases of the various defendants. We can therefore do no more than clarify the fundamental legal issues in general; for reasons of convenience, they will be discussed under the heading of the various counts of the indictment. When dealing with the various counts of the indictment, that major theoretical problem will be discussed which is of decisive importance for the particular offense concerned; but that does not mean that we intend to limit the application of the argument put forward to that particular count of the indictment. The arguments put forward do, on the contrary, apply also to the other offenses with the exception of the objection based on the maxim "tu quoque", which naturally applies only to Counts 2 and 3 of the indictment.

Questions of substantive law and questions of procedure are interconnected to such an extent that it will be impossible to avoid the danger of repetition. The main objection, namely that *ex post facto* law is prohibited, not only precludes the authority of this Tribunal, but also entitles the defendant to acquittal in accordance with the principles of substantive law. There will be some overlapping in the case of the other main arguments also.

In view of the fact that the authority of the Tribunal has been challenged, and its improper composition deplored, in the motion tabled by the undersigned on 5 May 1948, the emphasis in this closing brief will be laid upon the substantive facts. Certain problems of procedure will, however, also be discussed, in order to give the Tribunal a summary of the legal position of the defense.

A. We are dealing with
an American Tribunal
deriving its authority
from an international
body.

Sec. 2. Conflicting attitude of the IMT judgment.

The historical events which led up to the Nuernberg trials may be assumed to be common knowledge. They have resulted in curious divergencies in the assessment of the Nuernberg tribunals, which now appear to the international tribunals, now tribunals set up by the various occupying powers. In the latter case it has now been emphasized that those tribunals were exercising the authority of the German State, now that they were exercising the rights of the occupying powers. The IMT judgment uses, as of equal validity, arguments which reflect the various interpretations, thus anticipating the divergency which is characteristic of the attitude of the present Military Tribunal. The IMT judgment, p. 58 of the German text, reads as follows (p. 2 English): "The making of the Charter was the exercise of the sovereign legislative power by the countries to which the German Reich unconditionally surrendered; and the undoubted right of these countries to legislate for the occupied territories has been recognized by the civilized world." In that passage it is emphasized that the occupying powers have the legislative power in Germany, i.e. the stress is on the exercise, by the powers concerned, of German state authority.

It is on the other hand stated in the opening sentences of the IMT judgment that the Tribunal derives its authority from the London Agreement of 9 August 1945, in accordance with article 5 of which all the members of UN were entitled

to express their adherence to the agreement, an invitation which 19 other States - not, by the way, all the former enemies of Germany - accepted.

Finally, the following passage occurs on p 59:

"The signatory Powers created this Tribunal, defined the law it was to administer, and made regulations for the proper conduct of the Trial. In doing so, they have done together what any one of them might have done singly."

That passage shows that the IMT itself was unable to dispense with the idea that the four signatory powers, i.e. the occupying powers, had merely decided to do together what any one of them might have done singly.

The theory that the authority of the Tribunal is derived simply from the London Agreement, being a treaty under international law, offers no explanation of the anomalous fact, that Germany was not a party to that treaty, so that she could rightly complain about this "agreement imposing obligations upon a third party". Nor are we dealing with an agreement drawn up by UN: it was left to the discretion of the members of U.N. whether they desired to express their adherence to it or not. The idea, hinted at in the passage quoted above, that the signatory powers exercised, in concluding the London Agreement, Germany's sovereign rights, would amount to the recognition of an act by which the representative of Germany concluded an agreement with herself (i.e. USA, Gt Britain, France, Russia), an act which is held by the laws of the civilised world to offend against the moral sense of mankind, and therefore to be invalid ¹⁾.

1) Crowe-Kuester "Nuremberg as a legal problem", Stuttgart 1947, page 57: "I would consider such an agreement, in the conclusion of which a Power exercises its own sovereign power, and at the same time the sovereign rights of a nation it has vanquished, as invalid because the Power acted in that dual capacity".

1

CIVILIAN TRIBUNAL - 1945

Sec. 3. Criminal law in accordance with the acknowledged
principles of the civilized world. - But whichever interpretation is
correct, the indictment deals with offenses against international law.
That applies to the old core/^{of} so-called war crimes as listed in the Hague
and Geneva Conventions which have been incorporated in the military
penal laws of all civilized nations, as well as to the new category
of offenses which are to be treated in an analogous manner. In view of
the fact that the principles of the IMT have been declared as binding
by the Ordinance No. 7, the defense therefore consider it entirely
legitimate to take general standards of criminal law from the principles
of the civilized nations in accordance with the well tried methods of
filling gaps in international law; for there can be no doubt that
even if the Tribunals concerned are American courts, which is the
point of view of the defence, we are dealing with the execution of
an enterprise which was started in London by an international agreement,
the proper implementation of which would seem to depend on the
observance of the principles of international law. In this essay
"Comparative Law and International Jurisdiction" (Zeitschrift fuer
Auslands- und Internationales Privatrecht, 1. Jahrgang 1927, p 5 sqq),
Ernst RABEL, the well known expert on Roman and International Law,
formerly Professor at Berlin University, now of Ann Arbor (Michigan)
assesses the effect on legal theory of the international legal practice
which formed the basis for the execution of the terms of the Treaty
of Versailles. The key sentence with respect to the interpretation of
international agreements, in which "the outlook of the authors of the
agreements, determined as it is by their nationality" and also "the
national origin of general principles of law" play a part, runs as
follows (p. 17):

"Thus, the legal concepts and the standard form of international agreements can be found ^{by} a process of comparative law, - more technical details being excluded in almost all cases, - now by revealing the so-called common "idea" of the legal institution, now by preferring a criterion derived from "national law". Added to that, there is the filling of gaps in international law by referring to the general principles of law recognised by the civilized nations.

It can at the most be asked whether the principles referring to international penal law proper, i.e. to the conflict of various national systems of penal law, should not have led to the application of German law, similar to the manner in which international private law determined which local system was to be applied in the case of mixed courts of arbitration. The applicability of German law would be of considerable importance to the defendants who might suddenly be faced with legal principles different from those to which they are accustomed. But owing to the discrimination with which the IMT judgement clarified the question of guilt giving full consideration to continental laws, including German legal thought, the German interests too have been safeguarded, the more so since any major deviation of German law would, in view of its high state of development, preclude the formulation of a truly international principle. Of course the defense is fully aware of the fact that in accordance with legal theory all international law has been evolved from national law and should, therefore, be supplemented by the national law concerned. But we are dealing with a completely new development for which no precedent will be found in international law as we know it.

Nevertheless we should like to state once more in the following passage that in the opinion of the defence ^{we} are dealing with an American Military Tribunal deriving its authority from the Control Council, and therefore from an international body.

Par. 4. These are not German Courts. The Nuremberg Courts are Military Tribunals. There are no German military tribunals any more, because, in accordance with the conditions of capitulation and the legislation of the Control Council, there are no longer any military institutions in existence. The courts in question are military tribunals which were established by the Allies after the military occupation of Germany, for the purpose of carrying out the task which, as a rule, is assumed by every occupational power: to inflict punishment for war crimes which were committed by subjects of the occupied country. It cannot be denied that violations of the Hague Convention for Warfare on Land can also be punished by the State to which the perpetrator belongs. This kind of sanction is, in the first place provided for in the Hague Convention in which the high contracting parties undertake to issue corresponding internal penal laws. But the Military Tribunals in Nuremberg are not on that account German courts. In accordance with the Control Council Law, German Courts can be delegated in exceptional cases to try war criminals, and it is typical that this is done only if the persons whose rights were violated were also of German nationality or stateless, which proves that the courts normally competent are by no means German courts. It must be realized that the occupation powers exercise on the one hand as usual trustees the rights of the German Reich Government, and, on the other hand, exercise the authority of the military occupational power. An unbiased examination will reveal that they were acting in the latter capacity when, in accordance with Control Council Law No. 10, they tried before special military tribunals war criminals,

who in most cases had committed crimes against the occupational powers or their allies.

Par. 5. These are not Courts of the Control Council either.

At most, the question may be asked whether the military tribunals in Nuremberg are Courts of the Control Council or of the American occupation power. They doubtless have to carry out an order of the Control Council, but in spite of the fact that these courts were established in combined territories, it cannot be said that these tasks given by a central agency are carried out by organs of the central agency. Organs of the individual territories can also be commissioned with these tasks.

Par. 6. Comparison with American Federal Constitutional Law.

The same is also the case in e.g. American Federal Constitutional Law. Thus the Supreme Court of the United States stated in the case of Collector ./. Day 11 Wall. 113 (1871), that only few articles of the Constitution of the United States "could be carried into practical effect without the existence of the States", i.e. the individual states make the organs available which are to carry out the tasks of Federal Law. This applies particularly to the Courts. Matthews states in "American State Government", 1935, Volume I, p. 15: "The State Courts are often called upon to interpret, apply and enforce the Constitution and laws of the United States, both judicially and administratively". The author refers to *Clefflin ./. Roussman* 98 U S 130: "The laws of the United States are laws in the several States and just as much binding on the citizens and courts thereof as the State Laws are." In the *Second Employer's Liability Case*, it is stated even more clearly: "The fact that a state court derives its existence and functions from the state law" is no reason that the law of the United States should not be applied by them. This structure is in all combined territories more or less the same. With the exception of the Reich Court (*Reichsgericht*),

all German courts were up to 1935 either Prussian, Bavarian or Wurttemberg Courts, etc. The Law to be applied by them, however, was Reich Law, i.e., law established by the German Reich. The same applies here. The Control Council decided to try the German war criminals, but it did not have any organs of its own and therefore the zonal commanders, by virtue of their military authority, established courts within their military functions which had to carry out these tasks. When establishing the IMT-Tribunal, to use the words of the IMT Judgment, they did jointly something which each one of them could have done separately. Thereafter, however, the courts of the individual occupation powers replaced the common court.

Par. 7. Political development since the Rotterdam Agreement.

As to whether an official agency which exercises its authority in a combined State is a central agency or the agency of an individual territory must therefore be examined in each individual case and must be judged by the local characteristics which are evident in the structure of the organs concerned. Whereas in Nuremberg the International Military Tribunal was at first composed of judges of all States which were members of the Control Council, the present solution indicates a shifting of authority to the individual occupation powers. The transfer of jurisdiction over war crimes from the IMT to the military tribunals of the four zones of occupation corresponds with the general political development which, to an increasing extent, has led the Control Council Powers to act independently in matters of mutual interest. Numerous German legal experts have pointed out

that the zones are not merely administration districts, but become more and more separate areas of sovereignty.

All the more significance is to be attributed to these statements, as German legal experts would most certainly not frivolously assert that the unity of Germany was destroyed, a fact they deeply regretted. In any case, the Control Council in Law No. 10 did not even issue general directives for the establishment, staffing and procedure of the new courts which were to try war criminals, nor did it reserve for itself the right to influence the proceedings. On the contrary, in accordance with Art. II, 2, it is a matter for the zone commander to decide which Court is competent and which procedure is to be applied. This is what actually happened in the four Zones, and the American procedure in particular, which is contained in Ordinance No. 7 provides in Art. II c that it is left to the discretion of the zone commander to refuse an application of an occupation power to participate in a trial in his zone, because the national character of the Military Tribunals which were newly established in the different zones must necessarily be the basis.

Par. 8. American elements in the existent Military Tribunals.

The military tribunals in the American Zone are exclusively staffed with American judges. They prefer the charges in the name of the USA, through the Chief Prosecutor for War Crimes, who has been appointed by the Military Governor in accordance with No. III of Decree No. 9579 of the President of the United States of America, dated 16 January 1946. In the case of a death sentence, the sentence requires confirmation by the American Military Governor (Art. 25). He also has the right to mitigate sentences pronounced by the Court (Right of Pardon, Art 15 and 17). Officials of the American Army of Occupation are charged with the execution of these sentences.

Other characteristics are the Star-Spangled Banner in the court room and the words with which the Marshal of the Court daily opens the session: "God save the United States of America and this Honorable Tribunal". Finally it may be pointed out that the American Congress debated the financing of the Nuremberg Trials and by consequence consider them an American institution.

According to their structure, these courts are so-called military commissions in the sense of American Military Law, as stated in the book by William WINSTON on "Military Law and Precedents", Washington 1920, p. 836 and following pages, where it is particularly emphasized that the organization of military commissions can be established in more detail by special statutes. Only from this point of view can the status and the procedure of the existing Military Tribunals in Nuremberg be explained without difficulty.

Par. 9. Rebuttal of the counter-arguments put forward by the Prosecution. - The Prosecution takes a different point of view: That all judges and all prosecutors are Americans can be explained by the fact that a State can agree that charges are preferred before its own courts by a foreign government or that a foreign government may delegate its own judges to these courts. However, such State practice is not known. To construct an example: if, for instance, before the war, the French Government had desired that a certain German be sentenced by German courts, the German Government would never have agreed that the French Government, i.e. a French prosecutor, should prefer the charge before a German court, but a German court, in its own name, would have preferred the charge, in order to satisfy the French.

Applied to our case, this would mean: If the Americans were interested in having certain Germans tried before a Control Council Court, it would not be possible for the Control Council Government to instruct its prosecution authorities to prosecute in the interests of America, but only because there exists no prosecution authority belonging to the Control Council, and that brings us to the decisive point: the Zone Commanders make the administrative organisations of their occupation armies available for the tasks of the Control Council. This, however, does not make them organs of the Control Council, but they remain what they are: American, French, English or Russian courts. From the statements of the Prosecution in the below-quoted brief¹⁾, it is further evident that the model for the Council/has been the Military Commission that General Eisenhower set up by his order of 25 August 1945. It therefore cannot really be asserted, without contorting the facts, that the Military courts sitting here are not American courts. Professor Robert Kraus, in his lecture, "The Courts at Nuremberg", has put forward the same thesis. Ordinance No. 7, moreover, quite rightly emphasises in the first place the powers of the Military Government (pursuant to the powers of the Military Governor) and mentions only in the second place the mandate of the Control Council.

§ 10. Summary. Therefore, in the judgments on war criminals in accordance with the respective regulations, the following courts are to be distinguished:

1. The International Military Court (Case No. 1);
2. The Military Courts of the different Occupation Zones, which in Nuremberg are dealing with Case 2 and the following cases;
3. German Courts, to whom, in accordance with Art. III 1 B of Control Council Law No. 10, the prosecution

¹⁾ Answer and Memorandum in opposition to Defendant's Motion to dismiss No. IV and Motion to strike out No. 1 of 24 November 1947 in the Flick Case, p. 17 ff. and elsewhere (German Transcript).

of war criminals can in certain cases be transferred by
the Zone Commander.

To 1:

The IMT was based on an agreement of the four Occupation Powers and was jointly set up and appointed by them. The right of pardon was therefore vested in the Control Council. The right of pardon makes it clear in whose name justice is administered: it is an assured recognition of the history of constitutional law that the right of pardon belongs to the holder of the highest power, from whom also the jurisdiction of the court derives. The law which had to be applied was international law, supplemented through the agreement of the four occupation powers. There were no legal guarantees of a national constitution for the carrying out of the procedure.

To 2:

Some of the military courts now sitting in Nuremberg describe themselves even in their judgments and decisions as American courts. For example, in the judgment against Field Marshal Milch (p. 13 of the German transcript), it is stated: "It must never be forgotten that law is here being administered by an American court". The restrictive^{at most,} interpretation which the Prosecution places on this declaration is/ only correct in the sense that the Military Courts have of course to apply not merely American law, as the judgment in the Jurist can declare, but, primarily, by reason of its international task, international law. The authority for pardon, however, is the American military governor. The guarantees of the American constitution are applicable within a certain limit.

To 3:

If in the different occupation zones the military commanders make use of the authority delegated to them

to have war criminals brought before German courts, the procedure rules to be taken are those of German Law, which guarantees the constitutional safeguards of the prevailing German constitution and not those of the American.

B. War of Aggression.

Objection to the Use
of Retroactive Penal Law

Section 11. Is the IMT-Judgment Binding to the Military Tribunal?

Having established the American character of the Nuremberg Courts, we must now consider the material factors on which the decision to be given is based. In accordance with Article 10 of Ordinance No. 7, the decision of the International Tribunal is binding to all later Courts, in so far as invasions, acts of aggression, wars and of aggression, crimes, atrocities ^{and} acts of inhumanity are concerned. This regulation is to be interpreted to mean that both the factual proof of the ^{occurrence} of such actions and the examination of such actions with a view to assessing their criminal nature are intrinsic parts of the binding character of the decision.

On the other hand, international critics of the Nuremberg Judgment have made considerable progress, and are asking themselves whether the American Military Courts are authorized and are under ^{any} obligation to take into consideration the extraordinarily grave objections to the opinion contained in the IMT Judgment.

Section 12. It is not binding, as the Tribunal is no longer an
international, but an American Court.

To anticipate the outcome, the Defense takes the standpoint that American courts are bound, on legal grounds alone, to acquit the defendants in the industrial trials at least,

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since the London Charter is the sole basis for the IMT Judgment and this must be described as a Bill of Attainder, i.e. as subsequent legislation for the punishment of past actions, and as an ex post facto law as understood in American Law, and consequently does not empower an American court to impose a penalty. These conceptions of American Constitutional Law played no part in the IMT Judgment because of the international nature of the Tribunal, so that to this extent, in view of the different nature of the problem, no precedent exists. If the intention of Article 14 of Ordinance No. 7 was to prohibit the American Military Tribunal from examining the IMT Judgment from the view-point of the preservation of constitutional rights, this regulation would itself be invalid because it would violate the American Constitution. In order to substantiate this theory, it is necessary to discuss the reasons for the IMT Judgment, and in this, the Defense associates itself, to a great extent, with the explanations published by Professor Hans Kelsen, Professor of National and International Law at the University of California, in the 1947 Summer number of "The International Law Quarterly", under the title, "Will the Judgment in the Nuremberg Trial Constitute a Precedent in International Law?" (Volume I, No. 2).

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Section 13. It is not binding, because facts of the case are different: the defendants are private individuals, not political or Party leaders who have themselves violated the principle of "nulla poena sine lege".

But even if the court in question is an international one, the objection retains its force, for it must not be overlooked that in accordance with the principles inherent in the obligation to observe precedent, the obligation

always ceases if the material conditions which were to be dealt with in the precedent differed essentially from the facts now under consideration. This is the case here. If, in the IMT, leaders of the State or other political figures in leading positions were concerned, this time it is a question of the punishment of private persons. This distinction is not of minor importance, especially in connection with the prohibition against retroactive criminal laws.

J a c k s o n himself defended in principle the validity of the precept "nulla poena sine lege", but added, " But these men cannot claim that such a principle, which in many legal systems forbids laws with retroactive effect, must also apply in their case. They cannot prove that they have ever in any situation based their actions on international law or concerned themselves with it to the slightest degree."

The French Prosecutor Francis de W a n t h e n in his speech for the Prosecution on 17 January 1946 stated in similar vein that the juridical doctrine of National Socialism admitted that in domestic criminal law, even the judge can and must supplement the law. The written law no longer constituted the Magna Carta of the delinquent. The judge could punish when, in the absence of a provision for punishment, the National Socialist sense of justice was gravely offended.

After a lengthy quotation from a speech by the then Juristenführer F r a n k at the German lawyers' diet of 1936, he continues: "It would suit the defendant F r a n k and his accomplices very ill to find fault with the lack of special written penal provisions."

(Page 7)

K e l s e g makes use of the same argument when he writes:

"..... the infliction of an evil which, if not carried out.... as a reaction against a wrong, is a wrong itself. The non-application of the rule against ex post facto laws is a just sanction inflicted upon those who have violated this rule and hence have forfeited the privilege to be protected by it." (from " The Rule against ex post facto laws and the prosecution of the Axis war criminals," in " The Judge Advocate Journal", Vol.II p. 46 Case (Winter 1945)).

This shows that the punishment of the accused Nazi leaders was guided by the idea of retaliation rejecting the objection nulla poena sine lege, an idea of retaliation which must cease to apply in the case of accused businessmen and industrialists. In view of the wide range of legal precepts found in precedents, it is essential to work out the necessary distinctions, and these distinctions must here lead to the inapplicability of the precedent, since the defendants in this trial cannot, like the defendants in the first trial, be charged with violation of the precept nulla poena sine lege.

Even during the preliminary work in the American government offices, which preceded the London decisions, view-points arose which pointed in the same direction. Murray C. Bernays¹⁾, who, as Colonel and Chief of the Special Projects Branch of GI General Staff took part in the authoritative decisions of the War and State Department on the prosecution of the main war criminals, writes:

" All doubts and problems which arose in open discussion on criminal prosecution and many more over and above these, were investigated thoroughly in the War Ministry and the Ministry for Foreign Affairs and

1) " Survey Graphic", January 1946, Page 7 ff.

other offices in Washington, before the plan was finally approved. As Chief of the Special Projects Branch of the General Staff, the writer can attest to this from personal knowledge both of the original introduction of the plan and of its perusal stop by stop. There were those who advocated the punishment of the Nazi leaders simply by a decree from the Allied governments. They questioned the necessity and also the wisdom of legal proceedings. Others rejected the fundamental conception of the plan, including the precept that war of aggression is a crime. It is a tribute to the vitality of democratic traditions that before unanimity could be reached on the course to be taken, the American government had to be satisfied that we should truly be doing justice, even in the case of such a brutal enemy and even in the face of provocation, the obscene cruelty of which has seldom found its equal."

Bornays also deals expressis verbis with the objection of ex post facto law and has no more to say on the subject than that Hitler wanted inter alia to attack the United States as well, and brings as proof an otherwise disputed document to show that Hitler, in a speech to his "fellow conspirators" in 1939, declared:

"I am afraid of only one thing, and that is that Chamberlain or some other filthy swine will turn up with a proposal for a change of mind. He will be thrown out, even if I myself have to stamp on his belly in front of all the photographers. The invasion and elimination of Poland begins on Saturday morning. . . ."

In the same document, it is stated that the speech was received with enthusiasm and that Goering jumped up on the table and danced. In view of the depravity of the German Fuehrer clique, Bornays wants to convince his

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readers of the senselessness of any legal objection to their being punished.

Even if one could adopt this standpoint, the question remains: What have those businessmen and industrialists, none of whom took part in the Fuchrer's conferences which are so critical according to the IMT Judgment, to do with the policy of the highest Nazi government clique? They have a right to be judged by the law as it stands.

Section 14. The state of International Law on the outbreak of the Second World War. - Criticism of the IMT Judgment. -

The Defense does not wish to be misunderstood: there can be no doubt that everything must be done to prevent a war of aggression in the future. The most important task would be to create an international organization which, by virtue of its authority, would be in the position to force a decision in all international dissension by purely peaceful means. In such an organization, new penal standards would have a major role to play. Humanity has suffered too severely as a result of the war not to long to the very core of its being for lasting peace. It must be stated, however, that at the outbreak of the Second World War, a legal state such as this, in which the sovereignty of the various governments would be restricted by the existence of penal regulations governing a war of aggression, had not yet been achieved.

In the first place, the attitude adopted by the Court to the precept "nulla poena sine lege" is not quite clear. It is first stated that this principle is a primary requisite of justice; in the same breath, we are told, however, that it in no way restricts the sovereignty of the individual states; but then again, so much at least of the principle is retained that, we are told

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at the time when the action was undertaken, a crime, in the legal sense, must already have been committed, and all efforts are directed to the establishment of the fact that the criminal nature of the action had been a well-known fact for decades past. This attitude is in itself only a half-truth. Are there crimes for which no punishment is prescribed? The HAT Judgment replies: It was precisely in international law that there had always been *leges imperfectae* which, without involving express threat of punishment, had formed the basis for criminal proceedings, a fact of which the punishment of violations of the Haag Regulations for Land Warfare was constantly furnishing proof. This comparison is invalid, however, for infringements of Military Law have always been punished by the law of common usage. They therefore rank as crimes even in the case of a country which is not a signatory of the Haag Regulations for Land Warfare. In this case, we are concerned purely with the law of common usage, among the hypotheses for which figure the proof of precedent and the *opinio necessitatis*. One can see that there is no crime without punishment and that in itself suggests the conclusion that the out-lavry of war by the Kellogg-Pact does not stigmatize war as a crime in the legal sense, as there is no mention of the punishment of the governments concerned, the only sanction provided for being the loss of rights under the Kellogg Pact on the part of the government violating the terms of the agreement.

Section 15. The Case of the German Kaiser.

In connection with the case of the German Kaiser, to which the HAT Judgment refers, Kelsen rightly points out that, with the exception of Art. 227 of the Treaty of Versailles, there is no valid legal basis for assuming the criminal liability of the German monarch:

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"When the victors in the First World War intended to bring William II to trial - not for a crime against the peace - but "for a supreme offense against international morality and the sanctity of treaties", they thought it necessary to insert

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the provisions establishing, with retroactive force, his responsibility as organ of the German Reich into the peace treaty signed and ratified by this State."

For this reason, the USA established in the Committee formed in 1919, the impossibility of proving a legal basis for the charge against the German Kaiser (c.f. J. Brown Scott: House - Seeyneur, "What really happened at Paris", London 1921, Pages 237, 239).

Accordingly, in its note dated 21 January 1920, refusing the Allies' demand that the Kaiser be handed over to them, the Netherlands' government stated that it could not recognize any legal obligation to associate itself with an act of international policy on the part of the Powers:

"If, in the future, we should succeed through the League of Nations, in creating an international legal system having the authority to judge acts which have been classed as crimes by statutes drawn up at an earlier date, and which, as such, are sanctioned, then the Netherlands will associate itself with the new order of things."

That is, the government of the Netherlands saw in Article 227 of the Treaty of Versailles a retroactive penal law which was therefore not a legally defensible basis for the Allies' demand that the Kaiser be delivered up to them.

Section 16. War described as a Crime. -

The governing factor in international law -- linked, for the rest, with the observance of the sovereignty of the individual governments -- was in fact the provision in accordance with which the conduct of war does not, in the eyes of the law, constitute a crime on the part of the members of the Government. Kelsen (op.cit.) draws attention to the fact that the term "criminal" as applied to war in international law as it stood at that time did not in any way imply that the governments conducting the war were liable to punishment.

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"An illegal war may be called an 'international crime' and has been so called in the Geneva Protocol of 1924 for the Pacific Settlement of International Disputes, and in a Resolution of the Eight Assembly of the League of Nations (but not in the Briand-Kellogg-Pact). This term, however, does not mean - as the International Military Tribunal erroneously declares in its Judgment - 'that those who plan and wage such a war with its inevitable and terrible consequences, are committing a crime in so doing.'"

In this connection, the Committee Report of the Polish Delegate SOKAL on the Geneva Resolution of 1927 is particularly informative. As is well known, this Resolution was not ratified; it has, however, been introduced into the IMT Judgment as proof of the legal validity of the argument that wars of aggression are criminal. In this Resolution, war is described as criminal. SOKAL states:

"While agreeing that a resolution does not constitute a legal instrument as such, materially augmenting security and sufficient unto itself, the Third Committee is unanimous in its intention to appreciate its high moral and educative value."

Moreover, on page 381 of "Justice in Nuremberg", Foreign Affairs, April 1946, Professor Max RADIN of the University of California writes: "The word 'international crime' used about an aggressive war in the Geneva Protocol of 1924 cannot be rated higher now than it was rated then, as a rhetorical term - a noble rhetoric, to be sure - but not a term with definite legal content."

Section 17. The outlawry of war in the Kellogg Pact has no significance from the point of view of criminal law. - If, in fact, the application to war of the epithet "criminal" has merely a moral and educative value, the milder term "Outlawry" used in the Kellogg-Pact cannot be used as the basis for establishing the liability to punishment of the Governments involved. It was the intention of the fathers of the Kellogg-Pact to impose certain moral sanctions on the aggressor, to expose him to the moral judgment of public opinion throughout the world. In "Muenberg als Rechtsfrage", (Muenberg as a Legal Problem) Klett-Verlag Stuttgart (Page 42), my colleague Wilhelm GREWE, Professor of National and International Law at the University of Freiburg, writes:

"It is dangerous and indefensible - if the agreement is to be interpreted in its true sense - to attempt, as was done in the thirties and in the course of the recent war, to justify by means of the Kellogg-Pact, a partial suspension of Military Law and of the Laws of Neutrality in so far as the State violating the agreement was concerned. The attempt, however, on the part of Sir Hartley Shawcross, and with him his colleagues and the Tribunal, to deduce in addition from the text and system of the Kellogg-Pact direct criminal liability under the terms of international law (if I may be allowed to use such an expression), of the individual persons responsible for the violation of the pact, appears to be totally and completely lacking in legal justification."

The following are the factors opposing such an attempt:

None of the Governments signing the Kellogg-Pact in 1928 in fact so much as thought of the criminal liability in the eyes of the law of individual persons. So much can be clearly seen from a statement made by Secretary of State, Kellogg before the Foreign Affairs Committee of the Senate of the U.S.A. on 7 December 1928:

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"How we can assume that the United States was under a moral obligation to go to Europe in order to punish the aggressor or belligerent party, when no such proposal was made throughout the negotiations, when no one agreed to such a settlement and when, in fact, no such obligation exists is beyond my comprehension. I cannot understand it. As I see the matter, we are under no more binding obligation to punish someone for violating a pact of non aggression than we are to punish him for the violation of any other agreement concluded with us."

Wilhelm Greve¹⁾ rightly comments:

"Does that mean that one presupposes the right to punish a person? On the contrary! It is obvious merely from the examination of the logical processes of the law that this would in itself imply the denial of the power to inflict punishment: For when has there ever been a case in which the violation of an agreement by one party has bestowed upon the other the power to inflict punishment under international law? Cancellation of the treaty, reparations, if need be reprisals - those are the provisions made by the law to deal with cases of breach of agreement - but of the "punishment" of the State violating the agreement or of the individual persons responsible for the violation thereof, there has never been any question. International law cannot be thus changed in its fundamentals from one day to the next while the world stands by and watches in silence."

The Foreign Affairs Committee of the Senate of the U.S.A. submitted the following report to the plenary session of the Senate on 15 January 1929:

"The Committee is of the opinion that neither the spirit nor the letter of the agreement provide for sanctions."

1) op.cit. pp. 105 ff.

Should any signatory of the agreement or any State later associating itself with the agreement violate any of the provisions thereof, there is nothing either in the letter or in the spirit of the agreement to indicate obligation or liability on the part of the other signatories to impose a punishment or resort to force against the State violating the agreement. The effect of the violation of the agreement by one of the signatories is to release the other signatories from all obligations undertaken in that agreement towards the State violating the agreement."

On 8 August 1932, Secretary of State STIMSON said before the Council on Foreign Relations in New York:

"The Briand-Kellogg-Pact does not provide for any compulsory sanctions. It does not demand of any signatory that it should use force in the event of violation of the agreement. It rather attaches supreme importance to the sanction of public opinion, which can be made into one of the most powerful sanctions in the world."

Moral sanctions against the State violating the agreement, but not the liability to punishment of the individual persons responsible for the violation thereof were thus understood by the signatories of the Kellogg-Pact to be the consequences of violation of the agreement.

Section 18. The attitude of the Powers to previous violations of the Kellogg-Pact. - R a d i n writes in "Foreign Affairs" (April 1946, Page 381):

"If the violation of the Kellogg-Briand-Pact or of the Geneva Protocol constitutes a crime, either for the nation or for the persons instigating it, then the conduct at the time of all the Powers that joined in creating the Tribunal at Nuremberg puts them in the unfortunate light of having acquiesced in what they now denounce as criminal. No official protest was made by those Powers, when acts violating the Pact were committed. The personal indignation of such high-minded men as Mr. Stimson, Secretary of State, when Japan invaded Manchuria, was shared so far as our records go, neither by the President nor the Congress. And if it

was shared by the majority of the people, there is abundant reason to hold that at that time, no substantial number of Americans would have approved of war on Japan because of it. Did the United States, did Great Britain, France and Russia become accessories after the fact in these crimes when they declined to treat them as crimes and continued close relations both with the nations that had committed them and the persons who had instigated them? It is hard to understand why that conclusion does not follow."

Finch makes a similar statement in his periodical "The American Journal of International Law", 1947, Page 26, in an article on "The Nuremberg Trial and International Law":

"Moreover, the Tribunal failed to take into consideration or give due weight to the attitudes of the prosecution governments toward the same events at the time they took place. For example, the prompt recognition of the annexation of Austria by Germany, and the failure of the League of Nations to act upon a protest filed by the Mexican Government demanding that the obligations of the Covenant be enforced at that time, would seem to negative the holding by the Nuremberg Tribunal that the planning and consummation of the annexation was part of an international crime."

The examples in connection with this point are multiple: The following should be mentioned: The Chaco War in 1934, the conquest of Abyssinia by Italy in 1935-36, the Sino-Japanese conflict in 1937 and finally the Russo-Finnish war in 1939/40. In his lengthy plaidoyer before the D.T., my colleague Jährreis of the University of Cologne rightly stressed the point that the entire system of collective security had broken down completely at the outbreak of the second World War, that in none of these cases was there any mention of any liability of the governments of the aggressor

States to punishment, that diplomatic negotiations were even taken up shortly afterwards, leading, in many cases, to the recognition of the annexations.

Section 19. - Summary. - When all is said and done, we must concur with Professor Radin's opinion on the argument of *ex post facto* law as expressed in the book cited above:

"I do not think that in the many discussions of the matter by Mr. Jackson and others the challenge has been met." (page 25), and Professor Kelsen is right when he recognizes the London Agreement, that is, "special international law", as the sole basis of the IMT Judgment and refuses to accord the IMT Judgment the significance of a genuine precedent in the sense of general international law. The Chief Editor of the "American Journal of International Law", Mr. Finch, comes to the same conclusion in his treatise mentioned at the beginning.

Finally, there is the anxious warning of the Harvard Professor Manley C. Hudson to guard the integrity of international treaty instruments against the falsification of their meaning. Under the heading of, "Integrity of International Instruments", in "The Annals of International Law", January 1948 (Vol. 42, Book 1, p. 105), he writes: "It is difficult to conceive of the possibility of making substantial progress in the development of international law unless a scrupulous respect obtains for the integrity of international instruments. Yet a tendency now seems to prevail in some quarters to undermine that respect by torturing the meaning of great international instruments and by forcing them to serve purposes for which they were never designed, purposes at variance with the desires entertained by Governments when the instruments were brought into force. Evidence of this tendency was supplied by the International Military Tribunal at Nuremberg when it gave a spurious application to provisions of the Paris Treaty for the renunciation of war as instrument of national policy".

Section 20. Refutation of the attempt to justify the DT judgment on the basis of . . . special nature of the Case Law.

It can therefore only be a question of refuting the oft attempted evidence that, despite the open break with international tradition, there was no infringement of the principle, *nulla poena sine lege*.

Even those who welcome the judgment as legal progress and regard it as characteristic of the gradual development of case law that new ideas of law permeate imperceptibly into jurisdictional practice without there being any question of a break with the past, admit that, up to the DT Judgment, no penal sanction for aggressive war had existed. This is a way of thinking that may possibly be feasible from the point of view of an historian, but from the standpoint of the judge is a monstrosity. It is certainly true that, in the course of development by the gradual abandonment of old legal conceptions, or the gradual introduction of new legal ideas, case law has adapted itself to the prevailing social and customary changes, but if there is any stop in the development of law that requires a perfectly clear attitude as to whether the judge stands by what has been handed down, as is his duty, or whether he creates new law, which in principle should be left to the lawmakers, it is the introduction of the death sentence for an act for which, at the time of its committal, there was no question of penal sanctions. To use here the parallels of those cases of extensive or restrictive interpretation of an old legal maxim, is, to say the least, an astounding lack of judgment, in which political considerations have more weight than legal impartiality. What sense would remain in the prohibition of *ex post facto* law if in extreme cases it could be swept away by such considerations?

In any case, it was in the American Constitution itself that the principle, *nulle poena sine lege*, was first formulated, although the bulk of American law is case law.

If the new recognitions of the legal-sociological school for this purpose, without regard to the differences of method, are to be used, like those of the worthy Roscoe Pound, as a basis for dogmatic solutions then we are not far removed from that dangerous attitude which places political demands in relation to law on the same level as existing law. Kelsen rightly says:

"That the London agreement is only the expression, not the creation, of this new law is the typical fiction of the problematic doctrine whose purpose is to veil the arbitrary character of the acts of a sovereign law maker."

Section 21. The new principles have not prevailed in Common International Law.

Neither is the conception at all true that the IMT Judgment has really opened the way towards universal punishability of aggressive war. The further away legal and political developments get from the end of the war, the more the process against the German war criminals assumes the character of a special procedure, which, for the rest, leaves unaffected the accepted non-punishability of violations of international law. The Prosecution Authorities, it is true, rightly asserted in their Trial-Brief that the codification of the new international law was planned to take place within the United Nations in the sense of the Nuremberg principles. Closer observation shows, however, that we are far from the realization of these plans. At any rate, the Committee on the Progressive Development of International Law, after having been occupied for six months with the task of codifying the principles of the IMT Judgment, decided not

to undertake the formulation of the Nuremberg principles, because it was obviously a task that demanded careful and thorough study. The Committee concluded with a resolution that it was not competent to discuss the material contents of the Nuremberg principles and that such a discussion would be better entrusted to the International Law Commission. It should further be emphasized that the representatives of Egypt, Poland, England, the Soviet Union and Yugoslavia refused a majority decision of this Committee which expressed a recommendation that the carrying out of the principles of the Nuremberg Trial and its judgment appeared to render desirable the creation of an authorized international court which could exercise jurisdiction over such crimes.¹⁾

Obviously, therefore, it is also wrong, to base assertions, like Schick and Kelsen, on the fact that Russia's international Penal Code likewise contains a law of retroactive punishment and in so far also breaks through the principle, nulla poena sine lege; the Russian branch does not go nearly as far; for this penal law is directed against the counter-revolutionary persecution and suppression of Czarist times and the confusions of civil war and was thus enacted after the full victory of the Communist revolution. In the present case, however, in the state of development reached in the summer of 1948 the conclusion can hardly be avoided that this trial was conducted in such a manner, at the expense of the defendants, as though a far-reaching change had taken place in the whole system of international law, whereas in reality the new ideas, even within ILC itself, are still meeting with the strongest resistance and are still very far from realization in general international law. It goes without saying that this conclusion is not meant to throw doubt on the bona fides of the initiators of the Nuremberg trials; Jackson himself

¹⁾ cf. Schick "Crimes against Peace" in the "Journal of Criminal Law and Criminology" Vol. 38 (Jan.-Feb. 1948) p. 454 ff.

demanded with the greatest emphasis that the victors should apply the new principles to themselves also. But why has the new League International Court of the UN merely received competence for disputes between States in the old style, without in the slightest taking into account the new ideas of international responsibility of the individual, as practised in Nuremberg? In any case, the International Criminal Court has not yet come into being nor will it do so in the near future, for, as is well known, the mere recommendation for a decisive organ within the League of Nations and within UNO means the open avowal of strong opposition against the realization of the recommended innovation; certainly no wonder, when both the Soviet Union and England are counted among the opponents.

This development in a sense stamps the Nuremberg Courts precisely as special courts ("Aussergerichtliche"), for which a special law has been created ex post facto law. That is the sore point which explains the unusually sharp condemnation of the Nuremberg trials in Anglo-saxon quarters, as described by Felix Morley, President of Haverford College, who speaks of a travesty of justice and would have considered lynching more honorable and legitimate. Radin writes on Page 373 of the 1946 number of "Foreign Affairs":

"Others are humanitarians and pacifists to whom every form of bloodshed whether in war or by capital punishment is equally objectionable. They are represented by President Felix Morley, of Haverford College, who in "Human Events" of December 21, 1945, speaks of the entire proceedings as a "travesty of justice." Something very much like that is the position of Professor Milton R. Kervitz, as expressed in the January 1946 edition of "Commentary". And in one form or another it underlies the objections presented by Professor Sidney Hook and

others who have discussed the matter in the New York "Nation". It is curious that this point of view is often associated with a qualified approval of lynching. Mr. Morley declares that lynching would be "more honest and forthright" and specifically states in the radio-letter cited: "There could have been little or no objection if these men had been shot by military firing squads when captured." Professor Joad of Cambridge and other Englishmen of high standing have similarly declared that lynching of the Nazi leaders would be preferable to a formal trial."

I will only mention the Italian law scholar, VIDOVATZ, Professor of International Law at the University of Florence, who closes his examination of the Nuremberg Judgment with the following conclusion:

(*Belligerent International Law*, Florence 1946, page 293).

"The administering of justice on an international plane in the case of the war criminals has all the characteristics of a political repression, and it can only be operated in proportion to the existence of objective political conditions: victory on the one side, and defeat on the other. The trial arising out of the London Quadripartite Agreement represents the end of a struggle, rather than a juridical act, and it would have been more logical and more in accord with the elementary juridical conscience to say of the defendants, in the words of Robespierre on Louis X

"Il n'était pas un accusé, mais un ennemi; il n'y avait pas de procès à faire, mais une mesure de salut public à prendre."

Section 22. Refutation of the attempt to justify the IMT judgment on the basis of the special nature of international law. Professor Wechseler of the University of Columbia (*Political Science Quarterly*, 62th. year, March 1947, Page 23) sought to justify the

IMT Judgment out of the special nature of international law, by setting up the unproved and unprovable

thesis that the maxim, *nulla poena sine lege*, was an accommodation of internal State law and of its nature alien to international penal law. However, the IMT-Judgment/^{itself/}endeavored to prove that its decision did not violate the precept, *nulla poena sine lege*.

The Netherlands Government also, when it refused to deliver up the Kaiser - without at that time provoking any opposition - obviously adopted the opposite standpoint, and if international law is to be supplemented by the recognized legal principles of civilized nations, then the Proclamation of Control Council No. 3 proves that the precept which excludes retroactive penal law belongs to the great constitutional achievements of which all civilized nations are proud. At the same time, this Proclamation of the Control Council condemned a relatively mild infringement of the precept, *nulla poena sine lege*. The National Socialist amendment to the Penal Code had only admitted the principle of analogy to a limited extent, and the Reich Supreme Court has established that the principle of analogy would always be non-applicable when legislation had purposely left an act without prescribed punishment. In the present case, however, it is a question of the revolutionizing of the system of international law as hitherto existing, of the sacrifice of the main principle itself, which can never be justified by any kind of analogy whatever. That a new situation of international law can be created for the future by laws agreed upon by way of State treaties, even Wechseler would not deny, and it was just such a form of legal progress that the Netherlands Government had in mind when it declined on the basis of the existing law to deliver up the Kaiser.

It is precisely in international law that the danger exists of political passions favouring the abuse of law, - - -

and therefore the maxim, *nalla poena sine lege*, is indispensable for this sphere of law. In an aside-empire of 6 August 1942 - I am obliged for the quotation to Finch Note 17 - the English Government lays it down:

"In dealing with war criminals whatever the Court it should apply the laws already applicable and no special ad hoc law should be enacted."

Section 23. Result. The result of these conclusions can be summarized as follows:- The sentences of the I.T. Judgment on account of wars of aggression do not rest upon recognized principles of international law, but upon the agreement of the victor States, in which the German Reich did not participate. This agreement has the character of a Bill of Attainder and of an ex post facto law and therefore cannot be applied by an American court, any more than can the Control Council Law resulting from the execution of the London Agreement; for the American court does not bow blindly before every act of legislation, but is bound and accustomed to examine its constitutionality.

Section 24. The Tribunal is authorized, in accordance with American constitutional law, to challenge the validity of the law applied. While, given the existence of guarantees of the procedure to be followed, provided for in the American constitution, one might adopt the attitude, in connection with the right of the defendant to be confronted with the witness, that these guarantees do not apply to a military commission, because the military commission does not form a part of the American legal system, to govern which the principles of the constitution are primarily intended, in the case of the prohibition of the ex post facto law, we are not concerned with a regulation

bearing on the system of justice but with a restriction of legislative power which applies *mutatis mutandis* to all authorities which

have the power to administer justice in the name of the United States. Thus it is an acknowledged fact that the prohibition of the ex post facto law applies not only to the legislative organs of the United States but also to those authorities and persons entrusted with the power to issue decrees and orders.

R o t t s c h n a e f e r writes in his book "On Constitutional Law", Page 768: "They apply to every form of legislative action whether it consists of a statute or municipal ordinance". Now one can indeed raise the question of whether an auxiliary organ of the military government - and the military commissions are to be included among such - is authorized to examine the legislative power of the military authorities with a view to ascertaining whether or not they abide by the terms of the constitution. But the military commissions must be allowed this authority. It should not be assumed that the power of the military authorities to issue orders exceeds such acts of legislation as would be permitted to Congress itself. Any other attitude would allow the methods of arbitrary dictatorship to find in the military commission an all-too convenient flaw in the armour of legislation through which to insinuate themselves. The scope of the executive is restricted by internal factors: The idea that the American constitution should authorize the President to pass penal laws which Parliament was not in a position to pass, is inconceivable. In these circumstances, the Tribunal is therefore not bound by the opinion expressed in the IIT judgment, that the preparation of a war of aggression and the participation of private individuals in the infringement of international law on the part of their government of themselves constituted criminal activity. The guarantees given under the terms of the constitution are binding for the American occupation courts, however, in so far as they are of a "non-technical and non-remedial character." The Military Government Court Letters of 10 January 1946 state as much: "There is no longer a need for the necessary disregard of some of the customary procedural safeguards of American law in law

enforcement. It is therefore desired that Military Government Court proceedings in all essential points conform to the traditional procedures of American law which apply whenever the life, liberty or property of an individual are subjected to penal procedure."

The same applies to the London Agreement as to the regulations in force here. American law also adopts the view point that international agreements require ratification by Congress. At the same time, there are so-called agreements which the President can conclude without Congress, by virtue of his executive authority. One cannot assume, however, that these agreements concluded by the President by virtue of his executive power are agreements concluded on matters which would exceed the authority of Congress itself. We are told, in fact, that the examination of the question of whether or not an agreement requires ratification by Congress is not the province of the courts, but it is stated, at the same time, that the force of a ratified agreement cannot exceed that of a normal law. That implies, however, that the restrictions imposed upon legislative power apply to international agreements also, regardless of whether they were concluded by the President alone or with the consent of Congress.

Section 25. The Tribunal is at liberty in accordance with international law, to challenge the validity of the law applied. The IMT, as an international court, was in no way bound by Anglo-American legal tradition. Its decision therefore does not constitute a precedent in so far as the problems are changed by the American character of the Tribunal. But while acknowledging the London Agreement in principle as a law, even the IMT considered itself authorized to decline to adhere to it in so far as it threatened

punishment for crimes against humanity which were committed even before the war.¹⁾ This indicates that even in accordance with international law, it is the work of the court to examine the question of whether the limits imposed upon legislative authority by the standards of international law have been observed and, as already mentioned, whether or not the prohibition of the ex post facto law is at the same time a principle of international law. I recall the 1942 aide-memoire of the British Government previously cited and Control Council Proclamation No. 3.

Writing of the authority of the Military Government on Page 601, *Winters* writes:

"In such cases the laws of war take the place of the constitution and laws of the United States as applied in times of peace"

"This language, strong as it may seem asserts a rule of international law recognized as applicable during a state of war", and on Page 773:

"By the term law of war is intended that branch of International Law which prescribes the rights and obligations of belligerents . ."

According to this, the military commission is bound by international law, and one is in no way at liberty to assume that the Military Commander of an occupied country, who had so many and such varied opportunities to ensure peace and order in the occupied country by means of the exertion of direct pressure in administrative methods, to disregard the prohibition of retroactive penal laws contained in common international law. The total collapse of Germany and her unconditional surrender have not produced a state in which she must renounce all claim to the lawful treatment of German people; on the contrary, to make use of the *Hammerberg* judgment in the *Justice* case, these factors impose upon the Allies "a categorical duty of far wider scope towards humanity" than that imposed by the *Hague Regulations* for Land Warfare in an occupied country. (c.f. Page 9 of the *Judgment in the Justice Case*).

1) c.f. *Finch* c.f. cit. Page 23

Section 26. The Kellogg Pact does not outlaw the preparation and
planning of aggressive war, nor armament as such.

According to the foregoing, the Kellogg Pact does not come into consideration here. It is nevertheless, the real foundation for the IMT Judgment and for this reason the following points must still be referred to in connection with the present trial:

Kelsen's argument seems to me conclusive that the Pact to Outlaw War at most only outlawed war as such and not the planning and preparation for war. The acts involved in the "Planning and Preparation of Aggressive War", given by Control Council Law No. 10 the status of an independent crime, are consequently not even covered by the Kellogg Pact.

Moreover, the IMT Judgment has itself recognized that armament in no way falls under the condemnation of the Kellogg Pact. In the section concerning Schacht, it states:

" But rearmament of itself is not criminal under the Charter. To be a crime against peace, it must be shown that Schacht carried out this rearmament as part of the Nazi plans to wage aggressive wars. The case against Schacht therefore depends on the inference that Schacht did in fact know of the Nazi aggressive plans.¹⁾"

This is in accordance with the attitude of President Coolidge, who, referring to the military efforts of the United States in the World War, declared, on 10 November 1928, that it was the duty of the United States to itself and it

1) In the opinion of the IMT, moreover, Schacht did not achieve any such knowledge, on account of his proved participation in the occupation of Austria and the Sudetenland.

was in the interests of civilization and of peace in their own country, as well as in the interests of regular and legal relationship to foreign nations, to maintain a commensurate fleet and army. Such a policy of supplementary guarantees was necessary, besides the Pact for the Condemnation of War. The cause of peace would be furthered actively by the Pact and passively through the military armament. In praise of the Kellogg Pact, Coolidge said that it was the most complete and would prove the most effective instrument for peace that was ever created, because this Pact recognized "to the fullest extent" the duty of self-defence and did not undertake - because such an undertaking was contrary to human nature - to create an absolute guarantee against war.

Section 27. The Kellogg Pact does not provide for sanctions against private individuals.

The political leaders of a people might possibly, in the sense of the order of ideas of the IMT Judgment, be made criminally responsible, but not private persons. Here above all lies the weakness in the statements of the chief prosecutor Jackson, who proves too much and therefore is unable to carry conviction in anything. Jackson argues in the following manner:

In war people are killed and property destroyed, both crimes in themselves, which, however, according to the old conception, lose their illegal character through being committed in war. If, however, it is a question of a forbidden war of aggression, concludes Jackson, then this justification must disappear and the acts of war become nothing more than a number of criminal acts. If that were correct, then every German soldier would be a criminal, liable to punishment for every shot he had fired in the war, and everyone who had

taken part in the armament would be an accessory to these crimes. The IMF Judgment itself passed over these arguments in silence, because they would signify an impossible extension of the Kellogg Pact.

Apart from certain war crimes, it is an absolute novelty in international law to punish private individuals, a procedure which must raise most serious doubts. International law is a law governing the relations between States; even governments could not hitherto be held responsible as individuals. Even under the laws of warfare, apart from a few exceptions established by the law of usage, an individual who had acted under government orders was able to exonerate himself against a criminal charge. This peculiarity of international law is based on good reasons. How could government function if any citizen could make himself a judge on the political measures taken by his government? Who would protect him if he violated the laws of his country, invoking the provisions of international law? On 29 May 1931, the Supreme Court itself gave this point of view due consideration in the case of Mackintosh. This was a case of a Canadian Professor of Divinity, residing in the United States, who had applied for U.S.A. citizenship, but was only willing to sign the required loyalty clause under the reservation that he would be entitled to decide for himself whether any war in which the United States might engage was just or unjust within the meaning of the Kellogg Pact, because he could not accept the obligation to take part in a war which he considered unjust. The decision of the Supreme Court of the United States states that American law, while it recognized the rights of a conscientious objector, it could not acknowledge the right of a citizen to refuse his moral or armed help to the

State, if it were involved in a war which in his opinion was unjust, Mackintosh, therefore, could not reserve to himself the right to make a specific political decision.

This is an ancient problem. It has already been stated by Rousseau, who made the greatest spiritual contribution to modern democracy, that the decision on questions of foreign policy would have to be reserved to the Cabinets and it is an old English tradition that, in questions of international law, even the law courts obtain the opinion of the Foreign Office and base their judgment on it.

The criminal responsibility of the private person, which must not play any part in the question of the initiation of a war, has likewise no bearing on questions of the waging of war. Here, too, the decisions involved are of a highly political nature and must, of necessity, remain outside the judgment of the individual citizen; and, therefore, this point of view prevails in regard to the other counts of the indictment referring to the economic exploitations of occupied countries. The utmost that has been developed by religion and ethics, and not by law, is the so-called right of resistance against certain tyrannies, which, however, has never been a duty.

Section 28. Relevance to question of dolus, of events connected with the ratification of the Kellogg Pact in the Reichstag.

Finally it should once more be considered that the German Government in its note of 27 April 1928 bound up its acceptance of the Kellogg Pact with the expression of the certain expectation that general disarmament and possibilities for peaceful revision of the peace treaty would receive powerful impetus through the Kellogg Pact. No-one can seriously deny that this expectation had proved deceptive by 1933: general disarmament failed, tariff union with Austria was forbidden, German

colonial claims were rejected by the Colonial Committee on the grounds that colonies could only constitute a burden for their possessor¹⁾. This expectation which was here expressed is of course no express reservation, no *reservatio actualis*, but the mere fact that in the declaration of assent by the German Government it was expressed in so solemn a form and in a position of such prominence makes it more than an insignificant motive. It is, rather, a virtual reservation, which in accordance with the general theory of treaties, exists when it can be established that acceptance of a treaty would certainly not have been given if the signatory had foreseen the non-realization of his certain expectation.

- I) On the world crisis, Lord Lothian stated in the "Evening Standard" of 16 June 1936: "Another World War would break out only if the nations were not in a position to revise the treaties by peaceful means in such a way that they correspond to the requirements for the maintenance of peace. The Versailles Treaty, however, was based on the assumption of Germany's guilt in the World War. In the past 18 years, neither the League of Nations nor the victorious States has introduced voluntarily a campaign to mitigate the discrimination against Germany. Therefore Germany freed itself from discrimination. A final settlement with Germany had still to be made, however: firstly a frank discussion on the future of Austria, Danzig and Memel and on some movement concerning the boundaries of Hungary. Secondly, a candid discussion on the so-called problem of economic satisfaction. This would include Germany's being given facilities for guaranteeing a better standard of living for its population through a general reduction of trade restrictions, and furthermore the stabilization of currency and a settlement with regard to the Colonies, this as part of a general agreement to end the present competitive armament. Attention must be given to the question as to whether the colonial problem is to be solved by territorial restoration or by far-reaching economic agreements which would not affect the sovereignty and would be built on the basis of a trusteeship."

Correspondingly, in a speech to the Institute of Public Affairs in Charlottesville on 8 July 1937, American Undersecretary of State Welles said:

"The chief cause of the failure, however, was the inclusion of the tragic Versailles Treaty in the League of Nations Pact, whereby even in its first formative period the League of Nations became an instrument for the continuation for an indefinite period of the injustices and insupportable moral and material burdens imposed by the victor on the vanquished."

German national law offers an opportunity for the cancellation of the treaty obligation in such cases and although we need not decide here whether international law, which in its present state oscillates between the two poles of archaic formalism and progressive accessibility to modern legal conceptions and requirements, recognizes the virtual reservation in the same way as does national law, nevertheless the defendants, like all other Germans who have followed events at that time, can claim to have ascribed decisive significance to this certain expectation when Germany joined the Kellogg Pact. In the Reichstag debate on the ratification, this expectation expressed by Stresemann was plainly the central point of all the discussions. The foreign policy committee of the Reichstag stated in its opinion given on 6 February 1929 on the significance of the Kellogg Pact: "...that the Pact would have genuine significance only as the beginning of a further campaign, the basic points of which have already been emphasized in the German Note of 28 April 1928," and recommended the ratification only together with a resolution which was also accepted then, in which the Reich Government was asked to lend force to its certain expectation mentioned above by further steps. It was thus inevitable that the opinion arose among the German people that the Kellogg Pact not only damaged, but actually once more undermined the vital German demands for general disarmament and peaceful revision of the Versailles Treaty. If the subsequent developments disappointed the German people in these respects, it is true that on the basis of the statement by the Committee for Foreign Affairs the citizen could see in the Kellogg Pact only a declaration without legal significance.

Section 29, Russia and the Russian Government are participants criminis in the attack on Poland, and therefore judges inhabiles in prosecuting Germans. Invalidity of Control Council Law No. 10. -

The London Agreement and Control Council Law No. 10 have yet another defect which is bound to have legal consequences and which, in the opinion of an English critic of the IMT judgment, in view of the embarrassment which it would have caused the court, has also been neglected in its material basis. The Control Council Law threatens the war of aggression undertaken by Hitler against Poland in 1939 with severe punishment, although it is a fact that Russia, which is also one of the signatory States of the Yalta Pact, as one of the Control powers bearing the responsibility for the Control Council Law, itself took part in this war of aggression, witness the secret treaties between Molotov and Ribbentrop which have been submitted. Thus the fact is that an accomplice to the offense concerned makes out or assists in making out punishment for the offense. This making out of punishment has the character of a penal judgment, since it is not laying down the penalty for a future act, as does a normal penal law, but for a state of things which is finished at the time when the law is issued, and was brought about by a limited circle of agents. The London Agreement is actually entitled "Agreement for the Prosecution and punishment of the main war criminals of the European Axis. In American jurisdiction and literature on the prohibition of the ex post facto law the difference between a normal penal law for the future and the making out of punishment for an offense committed is clearly brought out. It is stated that the very purpose of the prohibition of ex post facto law is to prevent the political session of a Parliament, as had happened in England, from laying down new penalties for past actions,

since it was a matter for the judge alone to apply the appropriate penal laws to past actions, laws which lay down retroactive penalties for crimes already committed had the import of a judgment. In *Calder v. Bull*'s fundamental decision of 1798, which is still printed as leading case in Thayer's modern collection "Cases on Constitutional Law", it says:

"The prohibition against their making any ex post facto law was introduced for greater caution, and very probably arose from the knowledge that the Parliament of Great Britain claimed and exercised a power to pass such laws, under the denomination of bills of attainder, or bills of pains and penalties, the first inflicting capital, and the other less punishment. These acts were legislative judgments, and an exercise of judicial power."

Control Council Law No. 10 is just such a law. A participant in the action which is the subject of the trial cooperated in this legislative judgment. Such judgments can, however, not be pronounced by an accomplice of the defendant. He is judging his own case, he is a *judex inhabilis*. If a parliamentary law were in question, in view of Parliament's supremacy over all other State authorities, such a judgment could still be defended, if the constitution of the country concerned recognizes Parliament as the highest authoritative body of the State, as is the case in England. But in this case there is no question of a parliamentary law, but rather of a typical government law, which, as far as Russia is concerned, has been issued by the same government which took part in the war of aggression. Thus we have here an act of penal jurisdiction, which though it appears in the form of a law, is in fact intended, like a judgment, to ensure and carry out the punishment of specific perpetrators for

specific actions! This act of penal jurisdiction is invalid because a *judex inhabilis* cooperated in the issuing of the law.

It is a common principle of the law of all civilized States that no one can judge his own case, and this has also prevailed in legal theory everywhere in one way or another. In connection with Roman and common law, the doctrine is especially developed in the German law which for centuries has distinguished between the *judex inhabilis* and the *judex suspectus* and has made the collaboration of the former the grounds for the invalidity of the judgment, even when the necessary rejection of the judge by the defendant in the case of a *judex suspectus* was omitted at the beginning of the trial.

The fact that Fassin was itself injured does not, however, in my opinion, constitute grounds for rendering the Control Council Law invalid, since in offenses against States it has always been and always will be the case that the injured State itself, whenever possible, will claim the right to judge the offenders. One might have thought that an international tribunal would have been used to pass judgment on war of aggression, and not merely a tribunal of the victorious powers, especially since the French expert on international law, Scelle, pointed out in his famous treatises that judges enter an international trial as members of their own national States, are more or less complaisant to the will of their governments, merely on national grounds, and do not themselves possess an international status which would protect them from attack by their governments. As much in the national as in the international sphere, such trials give rise to dangers for a law which may succumb to political pressure. Until international organization is more solidly constructed,

this state of affairs must be accepted and the standpoint cannot be pleaded that the mere fact that the government of the injured country allows the criminal proceedings to be carried out by its judges and officials stamps the State documents with the mark of irremediable invalidity, on the other hand it is impossible that a country which belongs equally to the defendants' box, as happened in the London legislative judgment, should sit in judgment on a crime which could not have been committed without its participation.

C. PILLAGE AND SPOLIATION AND THE EMPLOYMENT OF
FORCED LABOR. THE OBJECTION BASED ON THE PRINCIPLE
OF TU QUOC UE.

Section 30. The harmony of the civilized world is also apparent in the legal sphere. - If the objection on the basis of *judex inhabilis* is restricted to the war against Poland, without affecting the other offenses punishable under the Control Council Law, I now come to an attack against the Control Council Law which has a bearing on all offenses. I refer to the point of view that the defendant is not liable to punishment for those offenses which the Allies have also committed.

In comparing the various legal systems, one finds, time and again, confirmation that the legal solutions of certain problems in civilized countries are to a large extent identical, although their basic systems are entirely different and, consequently, the reasons given for these solutions differ from each other to a considerable degree. This phenomenon, which ever and again proves the unity of the civilized world

can equally be applied to other phenomena of social life. It has repeatedly been stated in Nuernberg that during the war respect for international law diminished in all countries and, hand in hand with the lower estimation of international law, which was considered formal and formalistic, there appeared that ideology which, with total war, proclaimed the slogan, catch as catch can.

The Nuernberg trials remind the German people of the importance of international law, but at the same time - in view of the unstable legal principles on which the conduct of the occupying powers since the capitulation has been based - they produce great confusion and, among many people, even indignation. There exists the feeling that two different standards are being applied, especially in view of the fact that the highest occupational authorities have bluntly stated that the Germans have no legal protection. Since the capitulation, great discussions have developed on the meaning of the term "unconditional surrender", and the longer these discussions last, the more emphasis is placed upon the indestructability of fundamental rights, on which also the relationship between the victor and the defeated is based, and upon the inalienable nature of certain minority rights. There is one ray of light in this chaos, i.e. the passage of the IMT Judgment (p. 155, German edition, Nymphenburger Verlagshandlung, Munich), which says:

".....These orders, then, prove Doenitz is guilty of a violation of the Protocol. In view of all of the facts proved and in particular of an order of the British Admiralty announced on 8 May 1940, according to which all vessels should be sunk at night in the Skagerrak, and the answers to interrogatories by Admiral Hinitz stating that unrestricted submarine warfare was carried on in the Pacific Ocean by the United States from the first day that nation

entered the war, the sentence of Doenitz is not assessed on the ground of his breaches of the international law of submarine warfare."

Section 31. The legal significance of Doenitz' acquittal,-

This sentence states nothing less than that a violation of international law cannot be punished if former enemy countries, even if merely towards an ally of Germany, committed an analogous violation of international law. What is the legal significance of such a statement? Obviously, it does not assert that the violations of international law committed by both sides prove the existence of a usage which invalidated the violated international treaty, because it is expressis verbis stated that international law was violated and the opinion of the Tribunal is laid down as to how proper conduct in accordance with international law could have been observed. On the contrary, it asserts that the objection 'Tu quoque' is, of course, admissible. This calls for more detailed statements and a clarification becomes most necessary. Shakespeare's well-known quotation from "Measure for Measure", "What know the laws that thieves do pass on thieves?" must, of course, not be interpreted to mean that the poet considered the objection of Tu quoque basically irrelevant, because the subsequent verses prove that Shakespeare assumes that the theft committed by the juryman who takes part in the trial is not known to anybody, but this is the very prerequisite that is lacking here. It is not fair that judgments simply disregard facts incriminating the enemy States, as was done in the first trial in the case of Russia's attack on Poland, in order not to have to take up the question of the legal consequences resulting therefrom. Nor is it in order that they take the point of view that this question is not a part

of the matter under consideration and is not the object of the trial because the indictment concerns Germans only.

Section 32. Examination from the point of view of the history of law and of comparative law of the objection based on the principle of "tu quoque". - In the history of law, the Romans already dealt with the problem of Tu quoque. They reached the solution that the magistrate who had punished the perpetrator of a crime must, at the request of the perpetrator, permit himself to be tried on the same legal principles on which the perpetrator was punished. Justinian has perpetuated as common law this principle and its application to the judge who passes judgment by including portions of the work of Ulpian and Paulus under the special title of the Digests D 2, 2, 1 and 2, "quod quisque juris in alteram statuerit ut ipso eodem jure utatur". This point of view may suffice in a well developed judicial organization. If today a German judge, who himself buys on the black market, sentences a violator of the consumer law, the principle of justice is being observed, because the perpetrator has the right to report the judge and thus bring about the punishment of the judge. In our case, this possibility is lacking, because the organization of international tribunals is still in its initial stage. Therefore, a parallel to the legal reaction which is brought about by the accused raising the objection of tu quoque can only be looked for and found in times when judicial systems were still undeveloped, i.e. in the middle ages. However, at that time it was a recognized principle, at least where there existed an internal connection between the violation of obligations committed by both parties, that a person had to submit to judicial proceedings only if the claimant himself had fulfilled his own legal obligation. In Anglo-Saxon law, the principle of clean hands in the law of equity states the same thing as the maxim in

the feudal law, "Fidem frangenti fides frangitur". According to Planeck, the leading expert on medieval legal procedure, there existed, at that time, in manifold application, the rule: Whoever does not fulfil his own obligations, has no right to demand justice. (P. 389 of "Das deutsche Gerichtsverfahren im Mittelalter", Braunschweig 1879). These are solutions deeply embedded in law itself and placed on the same level as the principle of equality and the most important sentence in the introduction to the "corpus juris canonici", according to which nobody may do unto others what he does not desire others to do unto him, and even with the biblical postulate: Judge not, that ye be not judged!

It must be admitted that, in an ordinary criminal trial, the defendant has of course not the right to refuse to answer because his judge and his accusers have committed a similar offence. Nevertheless, the idea somewhat recalls French law, in so far that the right exists there in a civil proceeding to reject the judge on the grounds that he is to be a party in a similar lawsuit. In fact, the right of rejection, which exists also in criminal proceedings, is indeed nothing more than a refusal to answer before a court so constituted. However, for the way of thought prevalent to-day, this refusal to answer a charge is certainly more customary in civil law. In a civil lawsuit, the defendant can apply the exceptio doli, if the complainant is obviously not inclined to fulfil his own obligations towards him. It must now be asserted, however, that the international criminal procedure, which is here concerned, possesses in its structure elements which the internal criminal procedure of the State against the accused does not have. The establishment of an offence against international law presupposes the establishment of a violation of international law and this violation of international law affects first of all and quite certainly the relationship

between State and State. Therefore the defendant may, as for instance in the case of reprisals, put forward as justification the excuse that the State against whose subjects the offence against international law was committed, has itself done injury to the subjects of the violator State. The violation of international law thus affects also the clarification of relations between the States involved to each other and in so far contains elements which are present in civil law. It is a question here of the effect of the basic idea of reciprocity, which in the end rests on the fundamental equality of the State. The IMT judgment showed therefore a fine perception when, without further substantiation and excluding the point of view of reprisals, it simply acknowledged the fact that the Allies had committed the same violation of international law as exoneration of the defendant Doenitz.

Section 33. Total war and the list of war crimes drawn up in 1919 by the Inter-Allied Commission. - The decision in the case of Doenitz has moreover a further special significance for the present trial. The acquittal of Doenitz acknowledges that total war was carried on at sea. The same applies to the war in the air. Goering was not indicted before the International Military Tribunal because, as Generalissimo of the German Luftwaffe, he led the detachment of fighter aircraft in the German air offensive against England in 1940, although also in this case violations were committed against the Hague Regulations of Land Warfare.

When in 1919 the Interallied Commission for the Punishment of War Criminals of the first World War wanted to decide on the punishment of Germans for "crimes against humanity", the Americans opposed this desire, pointing out that "crimes against humanity" was too hazy a term.

Instead, they worked out a catalogue of 32 offences, taken from the Hague Regulations of Land Warfare and the law of the usages of warfare:

- 1) Killing of human beings, massacre and systematic terror.
- 2) The imprisonment of hostages.
- 3) The torture of civilians.
- 4) Systematic organization of hunger among the civil population.
- 5) Rape.
- 6) Imprisonment of women for the purpose of compulsory prostitution.
- 7) Deportation of civilians.
- 8) Interning of civilians under inhuman conditions.
- 9) Hard labor imposed upon the civilian population during military operations in their districts.
- 10) The assumption of sovereign rights during military operations.
- 11) Forced recruiting of soldiers from among the inhabitants of occupied countries.
- 12) Attempts to interfere with the national status of the inhabitants of areas occupied.
- 13) Plundering.
- 14) Confiscation of property.
- 15) The collection of taxes and illegal or exorbitant requisitions.
- 16) Devaluation of currency and issue of false money.
- 17) The imposition of collective sanctions.
- 18) Wanton depolation and destruction of property values.
- 19) Intentional bombarding of open cities.
- 20) Unnecessary destruction of buildings and monuments, religious and charitable institutions, as well as installations for education and art.
- 21) Destruction of merchant ships or of ships for the transport of civilians without warning and without necessary measures having been taken for the safety of passengers.
- 22) Destruction of fishing boats and lifeboats.
- 23) Intentional bombarding of hospitals.

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- 24) Attacks on and destruction of hospital ships.
- 25) Violation of other Red Cross regulations.
- 26) The use of gases which destroy or cripple life.
- 27) The use of dum-dum bullets and other inhuman weapons of war.
- 28) Issue of the order to avoid taking prisoners.
- 29) Mistreatment of the sick or of prisoners of war.
- 30) Employment of prisoners of war on prohibited work.
- 31) Misuse of the white flag.
- 32) The poisoning of water supplies.

Of the list of crimes against the agreements and customs of military law, the Nuremberg Trials did not charge the German defendants with nor make grounds for punishment.

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of all the offenses which constitute so-called total war in the air and at sea. No charge on the grounds of the bombardment of open towns, although in 1940 Goering led the aerial campaign against England, no condemnation of Dornitz on the grounds of the unrestricted U-boat warfare, no charge on the grounds of the destruction of hospitals etc. i.e. all offenses committed in the war at sea or in the air in the interests of waging total war were not included in the indictment because the Allies committed the same offenses.

Section 14. Report by General Spaatz, Chief of the American Air Force. It is most clearly apparent that total war against Germany was planned and carried through successfully from the paper by the American Air Commander in Chief Spaatz in the April Number of "Foreign Affairs" 1946. He does not justify the unrestricted bombing of Germany on the grounds that Germany had begun to erase towns in England, but says that the British had intended from the beginning to bring Germany to her knees with the aid of the Air Force. Owing to lack of means, however, they would not have achieved this alone, and the picture did not change until the Americans, who had been pursuing this strategic policy since the thirties, entered the war. In 1943, in a conference of the Allied Combined Chiefs of Staff in Casablanca, it was decided that unrestricted bombing should be carried out against Germany, its towns and industrial centers, thereby shattering its economy and annihilating the moral resistance of the population.

In his section, "Strategic Air Power", Spaatz says, I quote:

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"Strategic bombing, the new technique of warfare which Germany neglected in her years of triumph, and which Britain and America took care to develop, may be defined as being an independent air campaign, intended to be decisive, and directed against the essential war-making capacity of the enemy." Its immeasurable advantage over two-^{dimensional} techniques is that its units (heavy bombers and fighter escorts) are not committed to position in battle; on the contrary, they carry out their assigned missions, and then return to base to prepare for fresh assault.

What makes strategic bombing the most powerful instrument of war thus far known is its effective application of:

- 1) The principle of mass, by its capacity to bring all its forces from widely distributed bases simultaneously to focus on single targets. Such concentration of combat power has never been possible before.
- 2) The principle of objective, by its capacity to select for destruction those elements which are most vital to the enemy's war potential, and to penetrate deep into the heart of the enemy country to destroy those vital elements wherever they are to be found. These main objectives, reached during hostilities by strategic bombing following the establishment of control of the air, have not been attained historically by surface forces until toward the end of field campaigns.
- 3) The principle of economy of force, by its capacity to concentrate on a limited number of vital target systems instead of being compelled to disperse its forces on numerous objectives of secondary importance, and by its capacity to select for destruction that portion of a target system which will yield the desired effect with the least expenditure of force.

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Strategic bombing is thus the first war instrument of history capable of stepping the heart mechanism of a great industrialized enemy. It paralyzes his military power at the core. It has a strategy and tactic of mobility and flexibility which are peculiar to its own medium, the third dimension. And it has a capacity, likewise peculiar, to carry a tremendous striking force, with ^{unprecedented} / swiftess, over the traditional line of war (along which the surface forces are locked in battle on land and sea) in order to destroy war industries and arsenals and cities, fuel plants and supplies, transport and communications - in fact, the heart and the arteries of war economy - so that the enemy's will to resist is broken through nullification of his means.

British air leaders had this strategic concept in mind at the beginning of the war. But they lacked the means to carry it out. Their daylight raids on German industrial targets in 1940 resulted in prohibitive losses. Accordingly, the R.A.F. turned to night bombing, which was feasible despite the Luftwaffe's air supremacy over Germany because effective night fighters had not yet appeared. The British developed the most effective heavy night bomber, the Lancaster, which went into action in 1943 and remained the greatest load-carrier of the air war in Europe.

The strategic concept had also been the focus of studies and planning in the United States Army Air Forces in the 1930's. - - -

The American version was built around the B-17 for precision bombing by daylight. Daylight bombing was still regarded with scepticism in some quarters because of the German experience in the 1940 Blitz and the British experience over German targets. Both our weapon and our organization remained untried. It was feared that the losses in daylight bombing would be prohibitive. Accordingly, there was an inclination on the part of experienced

war leaders to put all Allied strategic bombers on the night run.

The critical moment in the decision whether or not this should be done came on January 21, 1943. On that date the Combined Chiefs of Staff finally sanctioned continuance of bombing by day and issued the Casablanca directive which called for the "destruction and dislocation of the German military industrial and economic system and the undermining of the morale of the German people to the point where their capacity for armed resistance is fatally weakened." To implement this directive there was drawn up a detailed plan, "The Combined Bomber Offensive Plan", which was approved by the Combined Chiefs of Staff, June 10, 1943, and issued to British and American air commanders. Strategic bombing at last had the green light; and it possessed a plan of operations of its own, with an approved order of priorities in targets, to achieve the objectives of the Casablanca directive. That plan called for bombing by night and by day, round the clock."

German statistics give terrible figures witnessing the effectiveness of the bombardment of Germany. Millions of civilians were killed, private property, in particular houses and factories, but also countless cultural monuments, hospitals etc. were destroyed.

Section 35. Argumentum a maiore ad minus.

If total war made this type of destruction of human life and private property a method of war for both parties, then in my opinion the theory cannot be maintained that the use of the economic potential of the occupied territories constitutes a criminal violation of the Hague Rules of Land Warfare.

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If a statesman sees that the war potential/ ^{of} his country is attacked by aerial warfare in a manner which cannot be reconciled with the law as we know it, he cannot be blamed on legal grounds for using, in the interests of his war effort, whatever industrial capacity in enemy countries is in his power. The initiation and gradual intensification of that German wartime policy in the occupied territories ran parallel with the increasing use, by the other side, of the methods of total war. The least that can be said is that in accordance with the principles of *tu quoque*, he must be denied the right (Aktivlegitimation) to pass judgments, who has himself waged war upon civilians in such an unscrupulous manner.

I am not discussing the moral aspect of the problem in this connection. Feilchenfeld, whose book I shall discuss in detail further on, has formulated the question as follows: should it be maintained somewhat unrealistically that States might be prepared to lose wars by refraining from actions which are absolutely necessary if victory is to be achieved, or should not rather the revival of the old concept of *raison de guerre* be given careful consideration; In the interests of international law the second of these alternatives should in my opinion be turned down, since it would bring great misery upon mankind. In actual fact however the States were inclined to act in accordance with what was called military necessity. What other explanation is there for the order given by Secretary of State Stimson that the first atom bomb be dropped on Hiroshima without previous threat or warning, although it would have been possible to issue either?

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But we can leave the moral argument there. What matters in this trial is the legal argument that, aerial warfare and even atom warfare having been waged against Germany and her Allies irrespective of the limitations laid down in international law, Germany herself, let alone the industrialists and business men on the defendants' bench who acted solely in accordance with instructions issued by the government, cannot possibly be brought to justice, by her very enemies, for having committed offences against military law, which although they also involved civilians, were in fact far less serious. The use of civilians for labor is a minor quantity compared to their killing, just as allowing foreign plants to operate means a lesser incursion on personal property than their violent destruction by bombing. It is true that the Allies did not make use of these offences in the same way to wage war as did the Germans. But, as the beginnings of Russian methods of occupation showed in the border states under belligerent occupation, before the German collapse, this was only because the Allies had no opportunity of so doing, since the course of the war never gave them the opportunity for a lengthy occupation. If one spares a moment's consideration for the conditions which have arisen since the Armistice in the occupied territories, one cannot at any rate say that the exploitation of the economic potential of the occupied territories lies outside the range of their methods. Against these arguments a major *ad minor* one cannot

object either that the seizure of factories and the compulsory employment of civilian labor is an entirely different matter from the effect of bombing and therefore the conclusion that bombing is permissible is not cogent to the admissibility of the German occupation measures. In naval warfare there is an inner connection between a prize and a sinking, since in both cases property is actually decreased. The Anglo-Saxons, as in many spheres of their law, still cling here to its older stages and altogether have never really fully adopted the limited conception of war, as defined by Rousseau and developed in the 19th century; it is only necessary to think of their restricted interpretation of Article 23 1 of the Hague Regulations of Landwarfare concerning the economic war, and their treatment of enemy property in general, where the right of confiscation by the Crown still exists.

That the transgressions of international law committed by the German are of minor importance is revealed by the consideration, primarily of an economic nature, that the measures employed by the German occupation forces, in whatever legal form they were clothed, could apply only for the duration of the war. That the compulsory employment of forced labor was only a wartime measure is obvious. But even the seizure of a factory is of importance only during the war. There are ^{either} three possibilities: / the occupying power which has commandeered the factory wins the war, or it loses it, or the result is a deadlock. If it wins the war, it concludes the peace treaty on the basis of a capitulation and then legalizes its economic measures through the conclusion of peace - the same applies for

the actual treaty peace in the case of a deadlock- or else it loses the war and the factory naturally returns to the possession of the occupied foreign country. Not for nothing does German penal law define theft, and pillage is ^a form of it, as the seizure of movable property belonging to someone else, since in the case of an ~~irrevocable~~ object the seizure has a different character from the outset, since the ultimate suspension of the rights of ownership of the person robbed cannot here be realized at all. If in the Hague Agreement one reads of pillage and spoliation, the first thing which actually enters one's mind is a picture of marauding soldiers who seize people's movable possessions from them by force. Anything that disappears in this manner very seldom returns, unless some particularly striking objects such as the Crown Jewels are concerned, the identification of which is particularly simple for obvious reasons. In the case of immobile objects the position is different from the outset. It may be that not all the German authorities thought of the possibility of an unfavorable outcome of the war from Germany's point of view when taking expropriation measures. The business man, on the other hand, makes it his policy to allow for all eventualities in his calculations. For him at least, all transactions were, by their very nature, calculated to be effective for the duration of the war only.

Section 36. State-controlled industry and total war in their effect on the Hague Agreement.

To conclude this count, let us once more examine the book by the American expert on international law, Ernst H. Poehlmann, "The International Economic Law of Belligerent Occupation", Washington 1942.

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The author wrote the book during 1940/41, which is particularly important because his expositions show the view an intelligent contemporary must hold of the continued validity of the Hague Agreement on the basis of the development of national and international law even before the experiences of this war. Even Foilchenfeld cannot make up his mind to declare the Hague Agreement entirely obsolete.

he rightly points out, however, that the picture of peacetime economy, the fundamental principles of which the Hague agreements wanted to maintain even during the war, had, in consequence of the nationalistic measures which have come into force since 1918, of the increasing direction of industry, of national confiscations and quasi-confiscations, among which must be numbered foreign currency legislation, undergone profound changes by the time of the outbreak of the Second World War in comparison with the liberal times in which the Conventions came into existence. Even the First World War had already revealed the tendency towards total war, which, with its mobilization of the entire civilian population as well for war work, no longer corresponded to the conception for which Rousseau's limited theory of war, with the separation of civilians and military personnel, was intended. He therefore prefaces his book in Chapter I with the number of general sections, such as "The nineteenth century background/Section III of the Hague Regulations" and "The International Economic Law of Belligerent Occupation under the Impact of State Socialism and Total Warfare" and writes:

"The Hague Regulations assumed a definite kind of normal peace optimum, namely ^{that} prevailing in the nineteenth century.

Since then this peacetime optimum has gone up in certain respects, but has gone down in others." (Page 18, No. 73).

"In modern wars, a far higher percentage of civilians, including women, are called on for war work. Whole civilian populations are at least potentially made subject to forced labor for war purposes. Civilians of this kind can hardly be said to be private individuals in the sense in which this term was used when wars were supposed to be fought only by princes and armies. Their work and their wealth are of military relevance. A hostile belligerent may be tempted to treat them as such." (Page 19, No. 75).

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" If one considers the treatment now meted out to enemy property and civilians in belligerent countries and in naval warfare, one is driven towards the conclusion that the protection of civilians in occupied regions provided by the Hague Regulations is becoming a limited survival rather than the expression of universal trends and practices (Page 21, No. 85).

Thus the trained observer could not but be uncertain in his legal conclusions and in view of the practice of total war now being introduced by the nations on both sides could not be conscious of wrongdoing if he acquiesced in the instructions and methods of the Government in order to exploit the economic potential of the occupied territories

Total war has stamped our time as the most inhuman in modern history. The individual is assessed by his Government merely according to his value for the purpose of waging war, and the enemy considers himself justified, because he desires to cripple and destroy the war machine, as the terrible expression is, in also starving and bombing unarmed citizens and even making low-flying attacks to shoot them down in the streets. The difference between soldiers and civilians appears to be obliterated. The civilian too, finds his life endangered, or forced labor makes him little better than a prisoner. The economic efforts of the big modern states, which, even in peacetime are organized in much the same way as a beleaguered fortress, are but a short step to forced labor. Indeed, so nearly have these efforts become the cornerstone of their economic charter that when the United Nations Commission on the Rights of Man met in 1947, Russia declared she would have to oppose the prohibition of forced labor and deportation.¹⁾

1) See Max Barth " Observations of a European" in the publication " Prisma" (Munich), December Number 1947. Pages 14/15.

The circumstances being such, can it really be said that forced labor and deportation are inhuman war crimes according to the established principles of the law of all civilized nations, if even in peacetime such practices by the State are held to be admissible? But as expounded above, the purpose of the Hague Regulations was to preserve the freedom of the individual and his property in time of peace, as indeed it did^{so} in the happier days when the Hague Convention was drawn up. But let us suppose there are two totalitarian countries, with their highly organized economic systems, and that one of these has been occupied by the other by force of arms. If the Hague Convention is applied literally, then the occupying power would have to make of the occupied territories a paradise where the individual enjoys perfect freedom of person and property, a condition unknown either to the occupying power or to the occupied state since the change over to the totalitarian system. This example shows that the methods of the occupying power, which also aim at the keeping of peace and order in the occupied territories - one has only to consider the problem of the unemployed in modern times - compel the occupant, by reason of the structural change in peacetime economy, to introduce also in wartime new methods of occupation, which cannot be built on the immovable foundations of the Hague Code. Incidentally, the critics of the methods of occupation now being applied in Germany very often fail to appreciate sufficiently this point of view, even although after the capitulation other legal principles come into question.

D. CRIMES AGAINST HUMANITY - PRIVATE
INDIVIDUALS ARE NOT LIABLE TO PUNISHMENT
UNDER THE TERMS OF INTERNATIONAL LAW.

Section 17. The foundations of International Law. I come to the crimes against humanity -- to a newly established offence under criminal law, the contours of which are only beginning to be outlined. This Count introduces the third main argument -- that of the penal responsibility of private individuals under international law.

The fundamentals of the argument were already touched upon when dealing with the question as to whether the Kellogg Pact established the individual responsibility of the citizen, in which connection reference was made to the Mackintosh Case. The idea then enunciated, that the Government of a country loses its freedom of action, if every citizen, in the name of international law, sets himself up as judge of its political decisions, and at the same time the individual is entirely without protection if he refuses in the name of international law to carry out the orders of his Government, shows the two angles of the argument -- the international and the national.

Let us take the international angle first. The Inter-Allied Commission for the Punishment of German War Criminals of the First World War turned down the conception of crimes against humanity as being too vague. When considering the newly established criminal offences, the IMT Judgment

exercised extreme reserve - indeed, to all intents and purposes it drew no inferences - because ordinary criminal law and the law governing warfare were deemed sufficient to deal with these crimes. The lecture given at the Sorbonne by the French Judge-in-Chief at the International Military Tribunal, Professor Donnedieu de Vaire, the highest authority on international criminal law, shortly after his return from Nuremberg, throws light on this point:

".....The Tribunal was also mindful of the need to uphold state autonomy, which is tantamount to the need to apply an undisputed principle, i.e. that of distributing the work according to the interstate relations. This is shown by the stand taken by him to the Count of the Indictment - Crimes against Humanity - enunciated in the Charter and frequently mentioned in the Indictment. The charge of crimes against humanity is likewise a newly introduced element, in so far as it goes beyond criminal offenses according to law, such as murder, assault - and embraces ill-defined acts which are not punishable according to ordinary law, such as, persecution on political, religious or racial grounds. To bring a charge for acts such as these is to run the risk of opening wide the door to arbitrary action.Then he (Hitler) planned to seize the Sudetenland and Danzig, he accused the Czechs-Slovaks and the Poles of crimes against humanity. Such accusations constitute a

pretext for interfering in other nations' internal affairs. They detract from their independence. They are a danger to peace.

Lastly, they are alien to international law, as well as to the internal law of most countries. They could only be brought and upheld by violating both the spirit and the letter of the principle establishing what constitutes a crime and a punishment."

But not only the introduction of a new delict is an *ex post facto* law, but also the holding responsible of individuals, the more so if the right to plead the necessity to carry out a superior order is eliminated. So far, international law has not held private individuals responsible for the misdeeds of the political organs of the State. Thus, according to the rules of traditional international law the punishment of enemy war crimes is not admissible if the deed was not self-motivated, but committed in execution of superior orders, that is if the deed can be imputed not to the individual perpetrator himself, but to the Government of the State. In the famous standard work on English theory of international law, "International Law" Oppenheim (4. L. Mc Nair Edition - 1926. OPar. 253) we find this passage:

"Violations of rules regarding warfare are war crimes only when committed without an order of the belligerent Government concerned. If members of the armed forces commit violations by order of their Government, they are not war criminals, and may not be punished by the enemy. The latter may, however, resort to reprisals".

We also know that the attempts, in the case of violations of the laws of naval warfare, to subject U boat commanders by way of an international convention to direct liability to punishment under the terms of international law by considering them as pirates being ¹⁾ *hostes generis humani*, have been foiled.

The opposite point of view is taken in the Justice case judgment in Nuremberg. The limitation of responsibility to "those who act directly on behalf of the State" as restated during the IMT by the French Prosecutor de MENTHON in his speech for the Prosecution on 17 January 1946, is observed no longer. In accordance with the new version any subject of a State is supposed to have committed a crime against international law of whom it can be proved that he "knew or should have known that in matters of international concern he was guilty of participation in a nationally organized system of injustice and persecution shocking to the moral sense of mankind, and that he knew or should have known that he would be subject to punishment if caught." (Para 32a of the judgment).

The theory is formulated so clearly that we are obviously dealing with a breach of the present provisions of international law, resulting in a recognition of *ex post facto* law. We do not of course wish to maintain that ordinary crimes should go unpunished, but let the Prosecution charge the defendants with such crimes, and prove them.

It was at any rate one of the provisions of the French proposals submitted to the U.N. which did not, however, gain the majority of votes in the 8th conference for the standardization of criminal law,

¹⁾ see Grewe pages 20 ff.

which recommended more incisive measures, that particularly in the case of crimes against humanity, which usually spring largely from national institutions, responsibility be limited to the political leaders concerned, and the executive organs be subject only to the criminal law of that particular nation.

In the statement of M. Jean Grawe, Swiss Professor of Law and Judge of the Supreme Court of Appeal at Geneva, submitted to the VIIIth. International Conference for the Unification of Penal Law held at Brussels in July 1947, the following occurs, under the heading, "The Suppression of Crimes against Humanity" :

"The French ~~representatives~~, presented to the Assembly of the United Nations, considered that only the governments, i.e. those persons upon whose initiative depends the decision to embark upon criminal activity, can be charged on the specific grounds of "crimes against humanity"; they alone should be called upon to account for their conduct before the Court of International Justice "appointed to establish the degree of responsibility for the State and to determine their fate." As to the persons executing their orders, whatever their motives, they would be merely common murderers and assassins governed by common law, in removing them from the jurisdiction of which we should encounter nothing but trouble; the only course open to us would therefore be to try them before and in accordance with the provisions of the common court of justice, taking into account in establishing the degree of culpability, of course, of the force of the "superior order" which they obeyed."

By so doing the French proposal followed the tradition of international law as formulated for example in the Geneva anti-slavery agreement of 1926. That agreement has been ratified by practically all the nations of the world,

including the USA, although the latter did reject for their nation in a reservation with reference to article 5, section 2, compulsory and obligatory labour for public purposes which had been acknowledged as a tenet of international law by the rest of the world. It is by the way laid down in article 5 that compulsory and obligatory labour for public purposes is permissible even when it involves change of residence and when no remuneration is paid.

In Article 5, the following appears:

"The High Contracting Parties recognize that recourse to compulsory or forced labour may have grave consequences and undertake, each in respect of the territories placed under its sovereignty jurisdiction, protection, suzerainty or tutelage, to take all necessary measures to prevent compulsory or forced labour from developing into conditions analogous to slavery.

Agreement has been reached on the following:

- 1) that, subject to compliance with the provisions of Art. 2 below, the use of compulsory or conscript labor is permissible only for public purposes.
- 2) that the high contracting parties shall endeavour, in areas in which compulsory or conscript labor is still being used for purposes other than public, to bring about a steady decrease in this practice, and, as soon as this is possible, the complete discontinuance thereof, and that such compulsory and conscript labor as is still in use shall constitute an exception and shall be used only against the payment of adequate remuneration, and on condition that the workers concerned are not obliged to change their place of residence.

Section 3 of article 5 reads as follows: "It is in every instance the central authority of the territory concerned which shall be responsible for the use of compulsory labour or the obligation to work."

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In accordance with the provisions of Section 3 the governments alone are to be held responsible under the terms of international law, whereas the individuals concerned are to be relieved of responsibility in accordance with the general principles of international law, as stated in detail above.

Section 30. Problems of national law. To begin with a personal reminiscence: When one read, prior to 1933, of the atrocities committed during the Russian Revolution, or of conditions in Russian forced labor camps, one said: "Thank heavens we are in Germany and not in Russia. In Germany these things would be quite unthinkable."

It may be supposed that similar thoughts came to the minds of American judges when they learn, in the course of the Nuremberg trials, of conditions in German SS camps, and they might say: "In America such things would be quite impossible." If the attempt is to be made to explain why these things could happen in Germany, which every sane German had thought to be absolutely impossible, it should above everything else be pointed out that the German constitution developed in such a way, that it became quite impossible after a certain date to oppose any measures, however criminal, carried out by the State. At the beginning National Socialism scored some resounding successes, especially in combating unemployment, and even sceptics gave it a chance.

The government took advantage of that period of economic recuperation to throw over the whole of Germany a fine net of steel, and to turn the whole machinery of National Socialist power,

not without reference to foreign exemplars, into a man-eating Moloch which left the people no choice. Then the camouflage wore thin in places, and when perceptive men here and there realized in spite of propaganda that the government would not stop short of crimes, it was too late; and the process repeated itself throughout the land.

But that involves legal problems of extraordinary difficulty. Criminal law as we know it has not been called upon to develop, and has not therefore developed, a system which could have coped with the criminal state (Etat criminel). Was it not true that the State itself had been considered until then as the exponent of legal order and of legal progress. But in Germany, unscrupulous positivists had seized power and forced the whole nation to serve their purpose. In a way it is obvious that the terrible conditions which prevailed in German concentration camps called for expiation under criminal law, and it is natural that in the first flush of indignation against these crimes the limits of complicity laid down in criminal law as we know it were extended so as to include everything connected in any way with these crimes. One might almost say that it is a characteristic feature of crimes against humanity, that a new type of crime is recognized in addition to the actions such as murder, injury, etc., recognized as crimes in traditional criminal law, i.e. persecution for reasons of race, politics, or religion, which naturally increases the number of those responsible.

But it is precisely in the totalitarian Etat criminel that the number of those responsible is thus increased to an inadmissible extent.

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Everybody who worked in Germany, at the front or at home, even if he was only paying taxes or tilling the soil, played a practical part in furthering the ends of a criminal regime by so doing, and was therefore an accomplice to the crimes committed by the government, provided he was aware of them.

But the IMT judgment has rightly opposed the theory of collective guilt; thus it distinguished clearly, in the case of the SS, between membership of a criminal association, and commission of the actual crimes.

The following is a passage taken from the IMT judgment (Page 113, Nymphenburg edition):

"The Tribunal declares to be criminal within the meaning of the Charter the group composed of those persons who had been officially accepted as members of the SS as enumerated in the preceding paragraph who became or remained members of the organization with knowledge that it was being used for the commission of acts declared criminal by Article 6 of the Charter, or who were personally implicated as members of the organization in the commission of such crimes, excluding, however, those who were drafted into membership by the State in such a way as to give them no choice in the matter, and who had committed no such crimes."

That quotation also involves the second point of view by which responsibility under the terms of criminal law was limited:

The use of the concept of the state of emergency. If the SS man had no choice but to join the SS, he is not liable to punishment because he was a member of the SS, even if he was aware of the

crimes committed by the SS, provided only he had committed no such crimes himself. But that formulation does not, of course, mean that the excuse of the state of emergency shall not apply to such other acts as he may have committed because he had been forced to join the SS. Whether the unlawful order as

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such is accepted as an excuse or not, the pressure thus brought to bear upon the person concerned ("Zwangssituation") is negligible. In the normal state, the subject can usually complain against an unlawful order, and higher authority will right the injustice. No such possibility exists in the State criminal. He who would complain courts selfdestruction, or at least dire peril for himself and his family, in accordance with the principle of collective responsibility of the family. There is nevertheless some point in the ruling of the London Charter with regard to the defendants in the first trial who were all leading personalities of the State, that the order be considered as an extenuating circumstance, but not as exempting from punishment. Such men have better chances of protecting themselves in an emergency than have ordinary private citizens. That is why the concept of the state of emergency was largely used in defense of the defendants in the first trial, in which ordinary private individuals were concerned, the Flick Trial. The Flick Judgment reads on Pages 10733 - 10736 of the German transcript:

"The defendants Walter Funk and Albert Speer were convicted by IMT because of their participation in the slave labor program. It is clear, however, that the relation of Speer and Funk to such program differs substantially from the nature of the participation in such program by the defendants in this case. Speer and Funk were numbered among the group of top public officials responsible for the slave labor program.....¹⁾

1)

Ministers Speer and Funk, as well as General Fieldmarshal Milch who was sentenced in Nuremberg, were members of the Council of Ministers in the Central Planning Board, which, in the opinion of the IMT was, together with the General Plenipotentiary for the Employment of Labor, Sauckel, responsible for the so-called slave labor program. The defendant Krauch did not belong to the Central Planning Board either.

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In our opinion, it is not intended that these provisions (Paragraph 2 of Article II and Paragraph 4, Subdivision b of Article II of Control Council Law 10) are to be employed to deprive a defendant of the defense of necessity under such circumstances as obtained in this case with respect to defendants Steinbrink, Burkart, Kaletsch, and Terberger. This Tribunal might be reproached for wreaking vengeance rather than administering justice if it were to declare as unavailable to defendants the defense of necessity here urged in their behalf. This principle has had wide acceptance in American and English Courts and is recognized elsewhere.

Wharton's "Criminal Law", Volume I, Chapter VII, Subdivision 126, contains the following statement with respect to the defense of necessity citing cases in support thereof:

Necessity is a defense when it is shown that the act charged was done to avoid an evil both serious and irreparable; that there was no other adequate means of escape; and that the remedy was not disproportioned to the evil.

A note under subdivision 384 in Chapter XIII, Wharton's "Criminal Law" Volume I, gives the underlying principle of the defense of necessity as follows:

Necessity forcing man to do an act justifies him, because no man can be guilty of a crime without the will and intent in his mind. When a man is absolutely, by natural necessity, forced, his will does not go along with the act. (Lord Mansfield in *Stratton's Case*, 21 How.St.Tr.(Engl.) 1046-1223.

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The Prosecution, on final argument, contended that the defendants are barred from interposing the defense of necessity. In the course of its argument, the Prosecution referred to Paragraph 4, Subdivision (b), of Article II of Control Council Law No. 10 and stated:

This principle has been most frequently applied and interpreted in military cases.....

Further on in the argument, it was said:

The defendants in this case, as they have repeatedly and plaintively told us, were not military men or government officials. None of the acts with which they are charged under any Count of the Indictment were committed under "orders" of the type we have been discussing. By their own admissions, it seems to us they are in no position to claim the benefits of the doctrine of "superior orders" even by way of mitigation.

The foregoing statement was then closely followed by another, as follows:

The defense of "coercion" or "duress" has a certain application in ordinary civilian jurisprudence. But despite the most desperate efforts, the defendants have not, we believe, succeeded in bringing themselves within the purview of these concepts.

The Prosecution then asserted that this defense has no application unless the defendants acted under what is described as "clear and present danger". Reference was made to certain rules and cases in support of such position.

The evidence with respect to defendants Steinbrink, Burkart, Kalotsch and Torberger in our opinion, however, clearly established

that there was in the present case "clear and present danger" within the contemplation of that phrase. We have already discussed the Reich reign of terror. The defendants lived within the Reich. The Reich, through its hordes of enforcement officials and secret police, was always "present", ready to go into instant action and to mete out savage and immediate punishment against anyone doing anything that could be construed as obstructing or hindering the carrying out of governmental regulations or decrees. In considering the application of rules to the defense of necessity, attention may well be called to the following statement:

The law of cases of necessity is not likely to be well furnished with precise rules; necessity creates the law, it supercedes rules, and whatever is reasonable and just in such cases is likewise legal. It is not to be considered as matter of surprise, therefore, if such instituted rule (sic) is not to be found on such subject.

(Morton's "Criminal Law", Volume I, Chapter VII, Subdivision 126, and cases cited.)

In this case, in our opinion, the testimony establishes a factual situation which makes clearly applicable the defense of necessity as urged in behalf of the defendants Steinbrinck, Burkart, Kaltsch and Torberger."

This shows that it is simply inadmissible to ignore the fact that the individual is inextricably trammelled in the meshes of the State, or to postulate from the point of view of international law that the individual be liable to punishment as an accomplice

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to the crimes committed by the totalitarian State. The normal forms of participation are here used to include actions which they were not intended originally to include.

Section 39. Question of delus: the position of the German
intelligentsia.

Each of the defendants has submitted proof that during his whole life he has striven to bring about human progress in the fields of social welfare, industry, medicine and civilization, and the many humane actions testify that each one persisted in this way of thinking throughout the Hitler period. To cite only one example among many, let us recall here the questions of personnel policy which arose as a result of the government measures for eliminating the Jews from the industrial life of Germany. These men are now charged with having employed forced labor, prisoners-of-war, concentration camp inmates, and for the treatment meted out to them.

How did these men come under the shadow of crime; how is it at all possible that such suspicion could come to rest on them?

The circumstances set out in the foregoing give the answer. To understand the behaviour of the defendants one must think back to the conditions which prevailed at the time. I will endeavour to explain their subjective position, that is, their motives.

In so doing, I will take the attitude typical of the German intellectual, who at heart was not interested in politics, to whom the National Socialist Movement was a natural phenomenon, and who at first failed to understand fully the dead seriousness of this ideology, having formed the mainspring for his intellectual life in very different times. The preoccupation of the individual with his more or less restricted specialized sphere of activity drew him, at first gradually, then in an increasing measure, into the set-up of the State and the Party, in which he could rest satisfied that the work in his particular sector was progressing. Naturally, he was not unperturbed by certain concomitant circumstances of the totalitarian state, but at first he conceived these to be merely toothy troubles, and hoped that the phase would pass.

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Others too, told themselves that one must put up with those inconveniences; the main thing was to stem the onrush of Bolshevism against Europe, and history shows that the only way to fight an enemy armed with new weapons is to use his own methods. Only by adopting many of the ideas and measures of revolutionary France was Prussia able, after the defeat in 1806, to find the strength to play a decisive part in the overthrow of Napoleon.

It was not until the war had broken out

that the individual came to perceive that those secondary phenomena occupied the centre of the scene, and realized the brutality and cruelty of this State, although for most people the extent of the enmity remained concealed until the end.

Thus, to an ever-increasing extent did the fear of coming into conflict with the State, or of being destroyed together with one's family as a saboteur, a defeatist, or an ideological opponent, become the underlying motive of his behavior. The closer he came into contact with the cruelties of the system, the more this fear grew. Hitler well knew the aversion of the ordinary German to his methods, and used every kind of threat to compel the people to bend to his will.

Notwithstanding, it would be incorrect to say that these men behaved in this manner solely from fear. The intellectual is wont to render to himself a minute account of his position and of the motives for his behavior. Every one of us has lived through hours under the passed regime when naked fear excluded all else. But with the return of a measure of calm, this gave way to other thoughts. The defendants too experienced the same thing. They too reasoned in a way that appeared to justify their conduct even from an objective angle. It must be left to the psychologists to decide to what extent this rationalizing was merely the result of inhibitions. Be that as it may, even in retrospect, some of these considerations must be construed as cogent reasons, contributing to produce a situation which must be regarded as a genuine case of a conflict of loyalties.

1) First the national problem: should we commit acts of sabotage even at the risk of exposing one's people to defeat in this struggle for life and death,

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once people whose sense of discipline and spirit of self-sacrifice are already strained to breaking point? One must have experienced the tragic inner conflict of the man who, torn between love of his people and his fatherland and the desire to have done with the criminal tyranny of Nazism, sought in vain for a practicable solution. His children were serving at the Front. Could he fail in his duty there? For even as late as 20 July 1944, the belief was still widely held among the intelligentsia, that the Generals would succeed in overthrowing Hitler and bringing the war to a close while still avoiding total defeat.

- 2) Each one of these men was entrusted with grave responsibilities, not only towards the foreign conscript workers, concentration camp inmates and prisoners of war, but also towards the free workers, who, in fact, formed the greater part of the staff, to say nothing of the remainder of Germany proper, of science, the churches, and that section of the Press which, in spite of everything, had retained a certain freedom of its own -- the help and support of the I.G. was of importance to them all. Could one be justified in forsaking them?
- 3) If the defendants had, in fact, withdrawn from the scene of the crime and had gone to the Front or taken up other work, they would have had to admit to themselves that they would be continuing to serve the ¹Etat criminal, further removed from the source of the crimes, it is true, but serving its purpose none the less effectively, and, moreover, without having taken any practical or effective step towards preventing the commission of the crimes, since their successors would be forced to act in precisely the way in which they themselves would have acted.
- 4) Yes, the defendants were justified in saying that they fulfilled a higher duty in remaining at their posts in order to oppose the evil, in so far as this was within their power, and

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to strengthen the good, than in escaping from their responsibility, thus leaving the field open to an unscrupulous successor who would have served the Regime well. When one considers that throughout Europe, the I.G. of all firms, enjoyed a reputation as one of the leading enterprises in the sphere of social welfare work, it is impossible to exaggerate the importance of the danger of such a deterioration in conditions, a deterioration which, moreover, is said to have affected primarily the foreign conscript workers and the concentration camp inmates. There have been cases enough in which boards of management, through having a single Nazi fanatic planted in their midst, have found themselves frustrated in every effort to counteract Party aims and methods.

This, in addition to the state of emergency in which the defendants found themselves, there was the conflict of duties to which the Court might give mature consideration. The outside observer's first impression might well be that of indifference towards the baseness of the SS State. The truth of the matter is quite the contrary. The situation was unique; the terrible pressure exerted as a means of compelling complicity in the achievement of the most dreadful aims of the State and which reflected not the slightest sign of horror at the elimination of all that was best, left no choice, more especially as it was possible in this way and in this way alone to achieve at least some considerable measure of success in lessening the evil, with the result that it was precisely the man who was conscious of his responsibilities and who thought less of his own danger than of his moral obligations, who felt compelled to follow the path chosen by the defendants. The problem resolves itself into the question of whether or not one looks upon the defendants as men of honor who could be relied upon in time of stress, to follow the path dictated by their conscience.

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Closer study of the crime has revealed those depths of the problem which go beyond the mere text of the law, the depths of a problem which, under the heading of the choice of minus malum,

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moral theology has for centuries dealt with, stating, that it is permissible to create the external conditions constituting a criminal action, if in this way, a worse evil is prevented.

Professor Holmuth von WEBER, Professor of Penal Law at Bonn, writes in the "Monatsschrift fuer Deutsches Recht", Year 2, Volume 2, February 1943:

"The Nurnberg verdict expresses astonishment, nay indignation at the objection raised by the defendants on the grounds that they had acted on higher orders, and accuses them of duplicity, not to say, dishonesty. 'Many of these men', so runs the verdict, 'have made a mockery of the soldier's oath of obedience to military orders. If it is more advantageous for their defense, they say they were forced to obey orders; if one reproaches them with Hitler's crimes, having established the fact that these were a matter of general knowledge, they say they refused to obey orders.' And yet this conduct can be soundly justified not only on ethical but also on legal grounds, the basis of the conduct being one which can readily be acknowledged by the man who places himself in the position of the recipient of the orders. Let us assume that his first reaction is to resolve, regardless of personal danger, to refuse to carry out the order. He then reflects on the consequence of such an action and becomes convinced - and rightly so - that someone else who will obey the order without further ado, will replace him in the position which he vacates. He now resolves to remain at his post: if he cannot prevent the execution of the order, he can at least lessen its effects and limit the amount of harm done by it. In other words, the conflict of duties, given the choice between two evils, the lesser, involving active co-operation, and the greater, involving merely passive acquiescence, resolves itself by choosing the lesser of the

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evils. It is true to say of this case also that there is no choice which admits of the complete avoidance of wrong; the recipient of the orders has only the choice between two evils, and his choice of the lesser can be no grounds for reproach."

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It is stated elsewhere that, in given circumstances, one must recognize "that the greater moral courage is often required to remain at one's post and to co-operate in the execution of orders, while striving to restrict the effect of such orders, and that much harm was prevented by such conduct on the part of men of principle under National Socialist domination. Legal opinion must not be allowed to overlook this fact. Moreover we must refrain from raising the objection that this evil could have been completely eliminated had all subordinate officials refused to obey orders. We are not concerned here with the collective guilt of an entire class, but with the criminal liability of the individual, and the judgment of such criminal liability must accept as its starting point the fact that the possibility of unanimous refusal to obey orders on the part of any one class would have been a mere illusion."

E. Conspiracy: The Gradual Invalidation of the

Concept of Conspiracy in Common

Law on the Continent in the

19th Century. On the bona fides of

the Defendants.

Section 40. The Gradual Invalidation of the Concept of Conspiracy on the Continent. The "conspiracy" of Anglo-Saxon law exactly corresponds with the common law concept of "plot" in continental law, as formulated by the famous criminologist, Anselm Feuerbach. (Section 47 of the "Handbook of Common Penal Law in Germany" ("Lehrbuch des gemeinen in Deutschland geltenden peinlichen Rechts") published by Mittermaier in 1847):

"When several persons mutually promise reciprocal help in the committing of a crime commonly decided upon and bind themselves in association to carry it out, there exists a plot (societas deliquendi, conjuratio). Inasmuch as the resolution of each individual is here decided by the expectation of the assistance and co-operation of all the others, based on the agreement, so each associate, considering that the expectation of the others continues until the accomplishment of the act, is to be regarded as an intellectual author of the accomplished crime, although he may otherwise have taken no actual part."

The usual definition of the English law reads as follows:-

"When two or more persons agree to commit any crime they are guilty of the misdemeanour called conspiracy whether the crime is committed or not."

But the development of the 19th century has in continental law led to the elimination of the concept of the plot in modern penal codes, because the condemnation of all conspirators in the lump, the concern with more or less irrefutable suppositions of guilt, no longer corresponds with the requirement of to-day, which is to make the individual responsible only for what he has consciously contributed to the accomplished crime.

The leading German textbook on penal law by Franz von Liszt likewise on this ground argues against the plot concept, thereby only continuing the opposition of Berner, Liszt's predecessor in the Berlin Chair for Penal Law, when he writes:

"Jurisprudence of to-day holds firmly that the individual can only be held accountable for an accomplished crime insofar as the concept of the perpetration, instigation or abettal thereof were actually materialised through the behaviour of the individual, and further that there can be no question of an attempt so long as the execution was not started."

Only in the prosecution of political opponents on the charge of high treason, in explosion attempts and so on, has the most recent development in Germany gone back to the idea of the plot.

The application of the penal facts of conspiracy therefore contradicts the recognised principles of the civilized nations. I quote as further evidence representatives of Switzerland, Italy and France, the voice of the last-named having so much greater significance in that he was the chief French Judge at the NIT Trials, Donnedieu de Vabre.

The Swiss Professors Thomann and von Overbeck write in their commentary to the "Swiss Penal Code" ("Schweizerisches Strafgesetzbuch"), General Section, Zaerich 1940, page 120:

"The plot (agreement to commit a specific crime) and the gang (association for the committing of several crimes) are not, contrary to some older laws, stressed in the Criminal Code and do not form any special kind of complicity (cf. Hafter, General Section 216). Perpetration, complicity, or merely preparation can exist only according to the structure of the facts and the degree of participation."

Cuglielmo SABATINI, Professor of Penal Law at the University of Catania, writes in "Penal Law Institutions", ("Istituzioni di Diritto Penale") volume I, General Section, Rome 1935, page 319:

"In the same way as, in the case of individual crime, merely the intention to commit it is not punishable, so in the case of a crime by more persons, merely the agreement to commit it is not punishable if the crime is not committed. Similarly, the instigation to commit it is not punishable either, even when the instigation has found acceptance but the crime has not been committed, unless the law provides otherwise in accordance with Article 115. This reservation applies to those cases where the agreement or the indication itself constitutes a crime, such as agreement or instigation to commit a crime against the body of the State ..."

Section 41. The view of Domnedieu de Fabre and of the I.M., as well as of the later Military Courts.— Finally, Domnedieu immediately after the end of his duties as judge in Nuremberg, held a lecture in Paris, in which he stated that the International Military

Tribunal was very sceptical towards the concept of "criminal organisations" and rejected that ^{of} conspiracy against peace, and therefore both concepts by this broadly restricted interpretation were - as Professor Donnedieu expressed it - divested of their substance. Under these arguments, he mentioned also the prohibition of retroactive penal law:

" . . . The far-reaching concept of plot or conspiracy is peculiar to British law. The indictment includes together under this term the whole Hitler undertaking, which had for aim the seizure of power and the war of aggression. The charge of the Prosecution based on such facts conceals within itself the danger that thereby the door will be thrown wide open to arbitrary action. Accusation of conspiracy is the favourite weapon of tyranny. When Hitler wanted to eliminate his political opponents, he accused them of having conspired against him.

Finally, it (the conspiracy) is equally as unknown to international law as to the internal law of the majority of States. It could only be advocated and maintained by violating both the spirit and the letter of the principle of the legality of crime and punishment."

According to this, again in the words of Professor Donnedieu de Vabre, the Tribunal abstained from drawing practical conclusions from the concept of conspiracy:

"The term conspiracy is restricted to the concept of a co-ordinated plan for the perpetration of some clearly defined act of assault and is thereby put on the same level as the concept, even of a very narrow concept, of complicity".

It was on account of this complicity then that the International Military Tribunal condemned eight of the closest co-workers of Hitler out of the 22 defendants.

In the Nuremberg Trials following those of the IMT, the Prosecution then brought charges of conspiracy against humanity and the perpetration of war crimes. This, however, is rejected by a plenary decision of the Courts concerned. It was decided that Law No. 10 did not recognize such a crime.

Section 42. The Question of Intent on the part of the Defendants.
Discussion of the case brought forward by the Prosecution. - Thus, the fact of conspiracy is not a crime contained in general international law and recognized as such by all the civilized nations and for this reason alone no valid foundation exists for a conviction of the defendants ex post facto. Even in the moderation, however, with which the IMT weakened the concept of conspiracy to abetting in a concrete act of aggression, it still required pre-knowledge of the plans of the principal, Hitler. Even on the basis of the American concept of conspiracy, however, the leading members of the I.G. could not be accused of deliberate co-operation in the preparation for aggressive war. Undoubtedly, the case submitted by the Prosecution as evidence of their thesis, viz., District Sales Organisation v. United States, 319 U.S. 703, is cleverly selected. Nevertheless, it does not affect the kernel of the matter. In this case, it was proved that a mail order firm for medicinal articles had sold morphium sulphate, a narcotic, through the mail, to a physician in a small town, to an amount of up to 6,000 tablets a month.

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All this was done through the mail. There was no personal contact between the company and the physician. The physician and other persons were convicted of conspiracy, of having violated the Harrison Narcotic Act. The Supreme Court sustained the conviction of the firm on the grounds that, in spite of the fact that the sales as such had been legal, the prerequisites of a conspiracy were given by the knowledge of the firm that the physician would sell the narcotics in an illegal manner. The Prosecution draws a parallel to our case in particular from the following sentences of the quoted decision:

"The goods sold were goods obtainable on the free market. Their sale was not restricted by any order forms, registrations or other requirements. When they (the narcotics) changed hands and were handed over by the seller to the buyer, they were goods which per se were subject to restriction and which could be legally used only if the strict regulations, such as those concerning morphine sulphate, were adhered to. The difference is the same as that between airguns and sport machine guns. All commodities can be used for illegal purposes, but they differ in regard to the element of danger inherent in them as far as their harmful and illegal use is concerned, nor would the nature of all of them alike indicate to the seller that they would be used illegally by the buyer. A free market for machine guns exists among gangsters and not among hunters or small boys.

Thus, drug addicts are the regular customers for the morphine which is obtained outside legitimate trade channels."

Can these two cases really be compared? It is a very logical conclusion that a physician in a small town who regularly receives unusually large quantities of narcotics most probably sells these narcotics illegally. The case of the German re-armament program is different. By the Treaty of Versailles, Germany was obliged to bring about a reduction of her armaments, but only with the condition that the other Great Powers, too, would also soon reduce their armaments. Not only had they not reduced their armaments from 1919 to 1933, but had even increased them considerably.

Paragraph 43. The testimony of Lloyd George. I will quote as a reliable witness for this state of affairs Lloyd George, the British Prime Minister during World War I and co-signer of the Versailles Treaty. In his great speech before the London Aldwych Club on 7 December 1927, Lloyd George declared:

"I have before me a document which was addressed to Germany by the representatives of the Allies prior to the signing of the treaty. Please listen to the following, namely the military clause: The allied and associated powers desire to make it understood that their demand concerning the German disarmament was not made only in order to make it impossible for Germany to repeat her policy of military aggression. It was also meant to be the first step to a general reduction and limitation of armaments, which the Allies intended to bring about, as one of the best preventive measures against future wars and the execution of which constitutes one of the foremost duties of the League of Nations. This is a quotation from the document which we handed over to Germany as the sacred obligation of Britain, France,

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Italy, Belgium and twenty other nations that, once Germany was disarmed, we would follow her example. Does that mean arousing false hopes? If it really means that, then it is not a hope which I aroused in a small speech before the Assembly of the League of Nations, but it is a hope which the greatest nations of the world have signed and sealed through their representatives and delivered to Germany. Can this be denied? What are the facts? I shall give you the facts and challenge anybody to refute them. These facts are so important for the peace of the world, and the peace of the world is so important for civilisation, that I am going to repeat them. I said that the States which were victorious in the World War, including those nations which joined us when we were certain of victory, have at present a total of more than 10 million men under arms, who are not only well equipped for a war, but even better so than in 1914. Mechanized equipment has been improved. By saying "it has been improved", I mean it is more horrible than anything the world has seen in the last war, and it will become more horrible from year to year. The best brains are occupied with the construction of machines designed to attack not only armies but also defenseless civilians.

I said ten million, but I underestimated their number. We disarmed Germany, Austria-Hungary and Bulgaria. Then we said: "When you are disarmed, we shall follow your example".

"The above-mentioned States have altogether about 200,000 or 300,000 soldiers,

who are not very well equipped, whereas the other countries have still 10,000,000. They have reduced these millions not by one single division, not by a single airplane squadron, not by a single battery. I still maintain that the solemn assurance we gave to the Germans and to the other nations which signed the Treaty of Versailles, is being disgraced. This is the censure that I have to pass and that I have to maintain."

(From: D.Lloyd George, "Thoughts of a Statesman", published by Philipp Guedalla, translated by Dr. Anton Mayer, Berlin 1929, pages 143 to 145). In a speech held in Farnmouth, on 29 September 1933, the same British statesman stated:

"I was a member of the committee appointed by the Prime Minister in 1931 to consider disarmament. On that committee the leaders of the three parties were represented. If the recommendations made had been carried out promptly and courageously, there would have been no trouble in Germany today. We unanimously decided to advise that Germany's claim to equal status in the matter of arms should be practically conceded. That, of course, was the purpose of the Treaty of Versailles.

If those pledges had been carried out, there would have been no trouble in Germany today. All the trouble that has arisen in Europe has come from a flagrant breach of the undertaking to disarm by all the victors except one. Germany disarmed and Britain followed. Every other signatory recoiled.

Their armaments are more powerful today than they were in 1914, and amongst these countries are not only France but the United States of America. For fourteen years there had been a great show and shame of working our schemes of

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general disarmament, but nothing had been accomplished. No heed had been paid to the warnings of men of pacific temperament like STRESEMANN and BRUNING that a party would arise in Germany demanding rearmament unless we kept faith. No heed was paid to these warnings. Not the slightest effort was made to keep faith. The failure has destroyed the normal influence of the League." (From: The Manchester Guardian Weekly, September 29, 1933).

The government of BRUNING had already left no doubt that, in the event of the Western Powers not undertaking disarmament in earnest at an early date, Germany would not consider itself bound any longer and would be forced to rearm on its own part. On the occasion of the negotiations conducted by the Disarmament Conference in 1933, the German Government maintained the opinion that the concessions of the Western Powers were inadequate. Consequently, Germany left the Disarmament Conference and the League of Nations in the fall of 1933 and re-armed on its own part. That German rearmament was also recognized abroad is proven by the German-British Naval Agreement of 1935, which establishes the ratio of the British fleet to the German fleet at 100:35.

Par. 44. The extent of German rearmament is overestimated. The statement of Burton Klein. With regard to the extent of German rearmament, the Prosecution fails to realize that Germany, through its rearmament, had not only to make up for the advantage which the Allies had gained owing to the total disarmament of 1919, but also for those armaments which the Allies had additionally produced in the period from 1919 to 1933. It is known for a fact that the armament budgets, particularly of the French, as well as of the Russians, Poles and Czechs were extraordinarily high during that period.

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Only in Great Britain, armament did not overstep the bounds of moderation. Quite apart from the fact that the scale of armament is a matter of high policy which is more or less left to the initiative of the government in every country, we should like to emphasize that German armament from 1933 to 1939 cannot be considered as disproportionate to German requirements in the event of a defensive war. It must moreover be stated that a single hostile major power would have sufficed to paralyze the German attempts to rearm. An essay on "Germany's Preparation for War: A Re-Examination" has just been published in the "American Economic Review" (Volume XXXVIII, March 1948, No.1), in which the author, Burton Klein, a Carnegie scholar at Harvard University, shows that, owing to Hitler's braggadocio, the Allies had highly exaggerated notions of German rearmament.

The author writes:

"Nearly all the economic and political studies of prewar Germany agreed on three major propositions. These were:

(1) that in the period before 1939 Germany had succeeded in building up a military machine whose comparative strength was enormous; (2) that practically all of the increase in production from the low level of the depression was diverted into the construction of a huge war potential; (3) that all economic considerations were subordinated

to the central task of preparing for war.

Even a cursory examination of the official German data recently made available shows that the validity of these propositions is questionable

"Most discussions of Germany's war preparations begin with Hitler's boast that the Nazis had spent 90 billion RM on rearmament."

"Actually, according to our definition, 51 billions were spent on rearmament in the six fiscal years ending March 31, 1939, and about 55 billions up to the outbreak of war.¹⁾

This corresponds to a little less than 50 per cent of total public expenditures for goods and services, and about 10 per cent of the gross national product produced during this six-year period....."

"It is convenient to divide the discussion of rearmament into two periods....."

".....Up to the time of the German reoccupation of the Rhineland in the spring of 1936, rearmament was largely a myth. In the three years ending March 31, 1936, some 11 billion RM. were spent;"

"The second phase of German rearmament began in the summer of 1936 when Hitler decided to start rearming on an intensive scale. Undoubtedly this decision was influenced by German intelligence reports which placed the strength of

1)

May I be allowed to quote one figure by comparison:
19 billion are provided for the American military budget in 1948, i.e. more than 50 billion RM for one year.

the Russian Army at nearly one million. Such "Bolshevist" superiority was greatly feared,¹⁾ and preparations were begun under the Second Four Year Plan to assure German dominance of Europe."

"In the three fiscal years ending March 31, 1939, Germany spent 40 billion RM for rearmament. In 1938-39, the last peacetime year, military expenditure amounted to 16 billion marks, a sum equivalent to 15 per cent of Germany's gross national product. Actually, the share of the German national output going for armaments was not much higher than that of the Allies prior to their entry into the war. Total British war expenditures in 1939 constituted nearly 15 per cent of her gross national product, and were only slightly less than Germany's. In 1941, the year before the United States went to war, the war expenditure ratio was about 10 per cent - and would imply a higher absolute volume of armament expenditure than Germany's."

"The Nazis placed heavy emphasis on the importance of air power, allocating nearly one-half of prewar military expenditures

1)

Defense Counsel's footnote:

In contravention of Germany's repeated representations, France ratified, in 1936, the so-called Eastern Pact with Soviet Russia, which constituted a violation of the Locarno Pact in the eyes of the German Government. As the spokesman of the French chamber announced on that occasion, discussions between the two general staffs had shown, that Russia must be considered as the strongest continental power at that time. He who would understand the psychological situation in Germany must bear in mind that France had once before inveigled the Turks into invading Central Europe in order to safeguard her acquisitions in Alsace and in the Palatinato: the Turks, intending to found an Osman Empire in the West, actually besieged Vienna, to be repulsed at the last moment by the Emperor's forces and by volunteers from all Europe, an event which, for a whole century, entailed unspeakable misery for the territories which had been conquered by the Turks.

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to the Luftwaffe. A large air craft output was therefore to be expected. Total monthly aircraft production rose from 30 in 1933 to 425 in 1936 and remained at this level through 1938. In 1939, total output rose by 60 per cent. At the outbreak of war, output of combat types was 500 a month, 60 per cent of the production rate credited to Germany by British Intelligence. Germany entered the war with an air force of 1,000 bombers, and 1,050 fighters, which was still not an inconsiderable number compared to the air of her enemies.

Before 1938 Germany produced only the very light Mark I and Mark II tank-types which were outmoded soon after the beginning of the war. Production of the Mark III began in 1938, and the Mark IV, in 1939. In the last three months of 1939 Germany produced 247 tanks, and 45 per cent of the Intelligence estimate of German production."

But that shows conclusively that the expert above all people, even if he took an optimistic view of German production, could not but consider as madness any war with a coalition including one of the major powers: Russia, Great Britain, or the U.S.A. It was moreover obvious to anybody that the major powers or at any rate one of them would, in the event of war with one of the States neighboring on Germany, take up arms against her.

P. Questions of Procedure.

Section 45. The superficial treatment of questions of procedure
in Ordinance No. 7 constitutes an arbitrary use of the law.

In view of the legal position as discussed above it is unnecessary to examine in detail the question as to whether the Nuremberg trials¹⁾ as they are conducted today (arbitrary composition of tribunals; lack of definite, mutually consistent rules of procedure - with blithe eclecticism, Ordinance No. 7 selects from all the principles available those which best suit the Prosecution -) lack legal foundations for the simple reason that here in Nuremberg a military commission is made the instrument of political trials motivated by vengeance. The function of a military commission is the maintenance of discipline, law and order in the occupied country. That is the reason why, being an instrument of the military governor, it is not a part of the American legal system, and belongs to the executive rather than to the judiciary.

Can trials like these be conducted by a military commission? Should not trials of such tremendous political importance rather be hedged about with all conceivable legal safeguards? In accordance with an old principle of true international jurisprudence particularly serious consideration should be given to questions of procedure because there always is a clash of various legal systems when lawyers from different countries take part in a trial: questions of procedure therefore assume more importance than they do in a normal court of law. Thus the Anglo-American system of presenting evidence is combined with the free evaluation of evidence in the continental manner, a practice which leads to results which are not found in the laws of any civilized nation. Either the presentation of documentary evidence is subject to formal regulations,

as proscribed

1) of the motion of 5 May 1948 quoted above

by Anglosaxon law in that case the Anglosaxon rules governing the evaluation of evidence, which have been formalized according to a pattern quite different to that adopted by continental law, must be applied. Or hearsay rule, right of confrontation, inadmissibility of confessions made under duress, are disregarded: in that case the rules of evidence must be relaxed in accordance with continental law (questioning of witnesses, documents etc.). The present *ad huc* compositum involves a devaluation of problems of procedure which is intolerable because it cannot do justice to the importance of the legal and material problems to be decided. The principles of oral presentation and written presentation (*Mündlichkeit und Schriftlichkeit*), proceedings only before the court (*Unmittelbarkeit*) and proceedings elsewhere (*Mittelbarkeit*) (the commissioner actually conducted interrogations when the Tribunal was in session) are also combined in an intolerable manner. The incongruity between the methods of procedure and the task to be accomplished is so obvious that the institution of these tribunals constitutes an abuse of the authority of the military governor.

Section 46. The shortcomings of the actual trial. - It is not sufficient that the trial should last for twelve months. It is obvious that a skyscraper cannot be built in the same time as a bower. It is not enough to draw into consideration the whole machinery, the persons concerned, the attorneys-at-law, the witnesses, when examining the fairness of a trial: all those things must rather be brought into relation with the extent of the material of the trial. That is the discrepancy which

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again and again strikes terror into the hearts of the Defense. The defense counsel has the feeling that he is sitting in an express train from the windows of which he sees the principal stations irrevocably rushing by. In addition, the general preponderance of the Prosecution, being a part of military government in an occupied and completely devastated country, renders the position of the Defense absolutely hopeless.

I would like to recall to you the countless motions and objections in which the Defense explained their difficult position to the Tribunal especially with regard to the collection of evidence: a difficulty which has been emphasized all the more by the unscrupulous manner in which the Prosecution made use of their advantages in collecting evidence. The latter had at their disposal a huge reserve of political informers as witnesses, and, from the very beginning, all the documents which had been collected in the confiscated factories and in the houses of the defendants, which they were able to examine at leisure for years. They had moreover at their disposal, owing to the laws governing the supply of information by the Germans to the occupying powers, the securing of witnesses by arrest, and denazification, interrogation facilities which were highly irregular, and led, at least in some cases, to intimidation of the witnesses which cast doubts upon the reliability of the statements made. I am further reminded of postal censorship stringent as it was during the first half of the trial, of the confiscation of the property of the defendants, of their wives and of their children, of the superiority of the Prosecution from the point of view of public information.

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That resulted in an enormous preponderance of the Prosecution over the Defense, who were moreover dealing with unfamiliar foreign rules of procedure and were handicapped, like all Germans, by unusually difficult living and working conditions. No matter how fully and objectively this Tribunal conducted the trial, it was impossible to compensate for such an inequality of arms, especially by the American methods of penal procedure, in which the function of the judge in the trial is limited to hearing the presentation of evidence by both parties. Thus the Defense is rendered all the more sensitive to handicaps which can be avoided. In his book, "Diritto internazionale bellico" Vedovato, a pupil of Amilotti, in criticizing the procedure adopted in the first Nuremberg trials (P.28) emphasizes the shortcomings of the trial; his argument leaves nothing to be desired. He writes:

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Formality and full respect for the formality of the law, i.e. for legality, are the only universal and eternal safeguards against the autocratic attitude of the individual and his political impulsiveness. When an international agreement by which a tribunal is instituted is based on the premise that the tribunal is to administer the law by the aid of a "prompt trial", if it is laid down that the Tribunal should limit the debate to an "expeditious hearing of the issues" (II,18 (a)), and that, leaving aside all absolute rules, it is to accept and use, " to the greatest possible extent expeditious and nontechnical procedure", he who thinks ought of Justice and the law, cannot but question the legal validity of the trial.

Munich, 21 May 1948

signed: Professor Dr. Eduard Wahl
(Professor Dr. Eduard Wahl)
Special Counsel for all
Defendants.

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CERTIFICATE OF TRANSLATION

9 June 1948

We,

Victoria ORTON,	ETO # 20129,
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hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of Closing Brief by Prof. Wahl.

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Defense Brief on Dynamit Aktiengesellschaft
(English)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

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Case 6
Defense

MILITARY TRIBUNAL No. VI

Case No. 6

D. A. G. (Dynamite-Aktion-Gesellschaft)

CLOSING BRIEF

submitted for the
entire defense by
Hanns GIERLICH and
Carl MEYER

Gung



Muenberg, July 8, 1948

Inter-Office Memorandum

To Military Tribunal VI
Case No. VI
Palace of Justice

FILED 2 July 1948 with
Secretary General
of Prosecution Case No. VI
for Military Tribunal VI
Defense Center

Corrections to be made in Closing Brief (D.A.G.)
Dynamite-Aktion-Gesellschaft

Item No.	Page No.	Line(s) No.	Correction
1		title	submitted for the entire defense by Hanns Gierliche and Carl Meyer
2	1	9	"syndicate-agreement" should be "Community of Interests agreement"
3	1	16	4. The activity of the company for exploit- ation of chemical products, Ltd. (Verwert- chemie)
4	1	22	"company for exploitation of chemical products, Ltd. (Verwertchemie)"
5	2	6	"branch companies" should be "affiliated companies"
6	2	24	"Dr. Strauss" should be "Dr. Struss"
7	3	3	"Dr. Strauss" should be "Dr. Struss"
8	3	6	"and the one hand" should be "on the one hand"
9	4	13	"all intents and purposes on the payroll" should be "for account of the DAG"
10	5	8 - 9 - 11 - 14	- and ever thereafter "syndicate-agreement" should be "community of interests agreement"
11	5	20	"military matters" should be "military product"
12	6	6	"p.13107/8" instead of "13107/8"
13	6	19	"Volkesturm" should be "Home Guard (Volks- sturm)"
14	8	19	"liaison agent" should be "liaison man"
15	9	12	"Common Interest agreement" should be "Community of Interests"
16	11	3	"rayon fibre" should be "plastic"
17	11	5	"in its rayon plants" should be "in the manufacture of plastic"

Item	Page	Line(s)	Correction
18	11	20	"any cooperation in technical fields" should be "any technical cooperation"
19	12	2	"technological" should be "technical"
20	13	1	"granting of credits for new plants in" should be "credit demands for new plants are"
21	13	12	"and were, moreover" should be "while the credits not submitted to the TEA were"
22	14	4	Insert: "organizationally" after "stated that"
23	14	6	"Dr. Mueller presenting reasons" should be "the presentation of the reasons for those credits by Dr. Mueller"
24	14	15	"WI-7233" should be "WI-7239"
25	15	4	"Doc. Book I" should be "Doc. 3, Book I"
26	15	6	"exerts" should be "excerpts"
27	15	17	"in the Reichsgericht" should be "as the Reichsgericht"
28	16	3	"Pooling of Gains" should be "Pooling of Profits"
29	16	22	Insert: D.A.G. in brackets after "that in our case"
30	16	3	"material" should be "defense evidence"
31	21	heading	should read: "3. The information which available to the I.G. and in particular to the defendants Schmitz and Gajewski concerning the activity of the DAG in the field of armament"
32	23	8	"synthetic material" should be "plastics"
33	25	19	"witness Schmitz" should be "witness Schmidt"
34	26	6-22-23	"witness Schmitz" should be "witness Schmidt"
35	27	20	"some knowledge of" should be "an insight into"
36	27	23	"witness Schmitz" should be "witness Schmidt"
37	28	13	"in the field of military reconstruction" should be "for setting-up of new plants for military products"
38	29	19	"business" should be "financial engagements"
39	31	6	"single" should be "different"
40	31	10	"disposed with" should be "missing".
41	32	21	"If therefore" should be "It therefore"
42	34	1	"Utilization" should be "Exploitation"
43	34	2	"sphere" should be "field"
44	34	3	"relation" should be "relationship"

Item	Page	Line(s)	Correction
45	34	20	"indisputable" should be "incontestable"
46	34	21	Insert after "DAG": "and was managed by persons who were, at the same time, employees of DAG."
47	35	7	"possible ordering agency" should be "ordering agency coming into question"
48	35	15	"to merge" should be "or to merge"
49	36	1	"DAG Doc. Book I" should be "DAG Doc. 8, Book I"
50	36	9 - 18	"armament office" should be "Army Ordnance Office"
51	36	22	"inclusion" should be "segregation"
52	36	23	"only because" should be "solely for the reason that"
53	37	4	"erected" should be "run"
54	37	21	"were engaged in so-called heavy industry" should be "running so-called Montan plants"
55	37	24 - 26	"heavy industry" should be "Montan"
56	38	23	"heavy industry installations" should be "Montan factories"
57	39	1 - 3	"relationship between the Verwert-Chemie and the Reich authorities was as regards agreements" should be "the contractual relationship was between the Verwert-Chemie and the Reich authorities"
58	39	6	"whatsoever" to be inserted after "advantages" and crossed out after "DAG"
59	40	heading	should read: "Information available to the I.G. and in particular to the defendants Schmitz and Gajewski about the activity of the company for exploitation of chemical products Ltd. (Verwertchemie)"
60	41	23/27	should read: "only two more letters were sent to I.G. offices which, according to the subject, are connected at all with the Verwertchemie"
61	42	4/5	should read: "did not become more intensive as during the mentioned period checked by me subject "
62	42	5	Cross out from "In addition" to problem. Should read: "In addition to this, I can state that if there was any contacting of DAG and IG concerning Verwertchemie at all, it was always - as in the two preceding cases - a matter of specific concrete questions, and we tried to benefit from the experiences of the competent IG Farben departments working on the same subject, when dealing with these questions."

Item	Page	Line(s)	Correction
63	42	14	"authority" should be "determination"
64	42	17	"use" should be "activity"
65	42	18	Cross out: "as its subject"
66	42	1/3	Cross out: from "As" to "deliveries"
67	43	7	"witness Schmitz" should be "witness Schmidt"
68	43	9	"military figures were" should be "turnover of military production was"
69	43	9/10	"the private turnover in one figure" should be "the turnover of non-military products in one figure"
70	43	11	"to which the statement of" should be "with respect to which"
71	43	13/14	"applies, namely" should be "states"
72	43	15/16	Cross out from "The sales" to "onwards", should read "that these turnover reports"
73	43	18	"surveys" should be "reports" "sales" should be "turnover"
74	43	26	"after" should be underlined "breakdowns" should be "reports"
75	44	2	"witness Schmitz" should be "witness Schmidt"
76	44	10	"breakdowns" should be "reports"
77	44	17	"bringing any influence to bear" should be "exercising any influence"
78	45	19	"occupied" should be "engaged" Insert after "1937 it" in brackets "(Verwert-Chemie)"
79	46	6	"1948" should be "1939"
80	46	11 / 14	"utilization" should be "exploitation"
81	46	22	"proceeding" should be "previously"
82	46	28	"general" should be "generalizing"
83	46	12	"the Central Office" should be "a central office"
84	49	14	"manufacturers" should be "plants"
85	51	11	"practice" should be "prettice"
86	51	12	"Amt Ausland" should be "foreign department of ("Amt Ausland")"
87	51	16	"to make such military reports" should be "to give such military expert opinions"
88	51	17	"special" should be "expert"
89	52	10/11	"had to be included officially in their implementation" should be "were officially engaged in the carrying out of these measures"

Item	Page	Line(s)	Correction
90	53	heading	should read: "The part of the DAG concern within the framework of the German gunpowder and explosive production and the relationship between the production of the DAG concern for military purposes and the production for civilian purposes"
91	53	13	Cross out "is unjustified" and insert on line 9 after "Prosecution"
92	53	19	"even objectively seen" should be "in fact"
93	54	2	"artificial material" should be "plastics"
94	54	4	"1943" should be "1947"
95	54	21	"into consideration" should be "as basis the"
96	55	27	"controls" should be "control" "(plants not owned by the Reich)" should be "(excluding Reich-owned plants)"
97	57	heading	should read: "The relationship of the I.G. to the firms Messing and Wolff and Co., as well as to their affiliated companies Sprengchemie and Wibel"
98	57	16	Cross out : "a technically unjustified"
99	57	20	"I.G.combine" should be "I.G.concern"
100	57	21/22	"containing very impressive percentages, is technically unjustified" should be "resulting in extraordinarily high percentages, is in fact incorrect"
101	60	13	"Under these circumstances it is self-explanatory if " should be "Therefore, it speaks for itself when"
102	60	17/23	Cross out and should read: "made the attempt to represent it as a "discussion of the activity of the Messing and the German Sprengchemie with members of the I.G." that Dr. Schmidt, in a conversation with I.G. lawyers on the system of the agreements with the Montan companies, usually mentioned that the Messing worked according to this so-called Montan system concerning the Sprengchemie just as the DAG did with respect to the Verwertchemie"
103	62	27	"new construction" should be "erection of new plants"
104	63	23	"Armament Office" should be "Army Ordnance Office"
105	64	8	"in themselves" should be "at that"
106	64	26	"in the course of the" should be "due to this"
107	64	30	"low level" should be "lower level"
108	2265	4	"with absolute by" should be "which had an absolutely"

Item	Page	Line(s)	Correction
109	67	heading	should read: "For legal reasons and in view of the actual facts the I.G. and in particular the defendants Schmitz and Gajewski would not have had any possibility to interfere in the activity of the DAG and much less of the Verwertchemie in the field of armament"
110	68	4	"Professor Wals" should be "Prof. Professor Wahl"
111	68	7	"10993/94" instead of "10999/94"
112	69	18	"page 7173" instead of "7179"
113	70	32	"DAG Doc.19, Def.Exh.19" should be "DAG Doc.13, Def.Exh.13"
114	71	2/3	"transactional decision" should be "enterprise"
115	71	9	"KZ" should be "concentration camp"
116	71	14	"10999/94" should be "10993/94"
117	72	heading	should read: "The charge of the Prosecution that the I.G.Farben concern had deliberately worked towards a weakening of the war-potential of the prospective enemies of Germany lacks any foundation with regard to gunpowder- and explosive field"
118	72	12	"The Prosecution of war" should be "warfare"

Nuernberg, July 2, 1948

Carl Weyer
 (Carl Weyer)
 Assistant Defense Counsel

In its discussion of the share of the I.G. concern in the German armament measures the Prosecution deals at length with the Dynamite-Aktion-Gesellschaft (D.A.G.) and its relations to the I.G. Corresponding to the submission of the evidence material of the Defense, which compiled the pertinent defense material in three DAG Document Books and submitted them as general evidence material of the Defense, this question complex will be dealt with in a separate Closing Brief. The statements are listed according to the following points of view:

1. Events leading to the syndicate-agreement IG - DAG and the financial relations between the IG and the DAG page 2 - 4
2. The relation of the DAG to the IG as it took shape in practice page 5 - 20a
3. The information available to the I.G. and in particular to the defendants SCHMITZ and GAJEWSKI concerning the activity of the DAG in the field of armament page 21 - 35
4. The activity of the Verwertchemie company for exploitation of chemical products, Ltd., in the field of armament, its relationship to the Reich (Verwertungsgesellschaft fuer Montanindustrie = company for exploiting products of heavy industry, Ltd.) to the DAG and to the I.G. page 34 - 39
5. Information available to the I.G. and in particular to the Defendants SCHMITZ and GAJEWSKI about the activity of the chemical exploitation Co. (Verwertchemie). page 40 - 42

6. The part of the DAG concern within the framework of the German gunpowder and explosive production and the relationship between the production of the DAG concern for military purposes and the production for civilian purposes. page 53 - 56
7. The relationship of the IG to the firms Wessag and Wolff and Co., as well as to their branch companies Sprengchemie and Bibia page 57 - 60
8. Even the complete knowledge of the production conditions in the field of gunpowder and explosives would not have permitted deducing the aggressive plans of the Government, because the state of armament in this field was completely insufficient for modern warfare page 61 - 66
9. For legal reasons and in view of the actual facts the IG and in particular the defendants SOEMITZ and GAJMUSKI would not have had any possibility to interfere in the activity of the DAG and much less of the Verwertchemie in the field of armament page 67 - 71
10. The charge of the Prosecution that the IG Farben concern had deliberately worked towards a weakening of the war-potential of the prospective enemies of Germany lacks any foundation with regard to gunpowder- and explosive field. page 72 - 75

1. Events leading to the syndicate agreement IG -- DAG and the financial relations between the IG and the DAG.

Referring to the affidavit of Dr. STRAUSS (Exh. 325, NI-8313, Book 33) the Prosecution holds the opinion that the pre-eminent position of the IG in the

field of nitrogen induced the DAG to sign a syndicate agreement with the IG in 1936 (see Prol. Mem. Brief of the Prosecution, Part I, page 29). This interpretation of the witness STRAUSS, who did not take part either directly or indirectly in the negotiations nor had submitted any proof for his opinion is in itself not conclusive; because, on the one hand, there were other important nitrogen producers in Germany (see in this respect OSTER Exh.1 and 2, OSTER Doc.1 and 2, OSTER Doc.Book 1, page 1 and 3) on the other hand, the leading position of the IG in the field of nitrogen by no means caused also the other German consumers of nitrogen to enter into closer organisational relations with the I.G. quite apart from the fact that in view of political and economic importance of the explosives produced by the DAG for mining purposes, it would have been absolutely impossible that the IG would have stopped the delivery of the pertinent basic products to the DAG.

The real reasons for the conclusion of the syndicate agreement have been described in detail by the witness Dr. SCHMIDT who was a Vorstandsmember of the DAG since 1915 already and remained in this capacity continuously until the middle of 1945, - since November 1945 by order of the English Control Officer, - in his affidavit of 1 December 1947 (Defense Exh.1, DAG Doc.1, DAG Doc.Book 1, page 1). The merger with the IG was, according to him, a natural result of the conditions after the first world war, in order to establish a clear separation of the spheres of activity of the two enterprises, after the DAG and the companies combined with it in the general cartel had been forced because of the closing down of their

production to take up making products which turned them into competitors of the IG. After the signing of the syndicate agreement the two production fields were in fact clearly separated from each other and in this way that the DAG concern confined itself to the production of explosives and fuses, hunting and sport ammunition, and celluloid and plastics and gave up to the IG, other products the manufacture of which had been taken up in the meantime, like artificial fibres and films whereas the IG gave up the manufacture of gunpowder and explosives and leased the comparatively small black gunpowder factories of the former Cologne - Rottweil A.G. which were then still working and which through fusion had become IG plants, to the DAG. The gunpowder department of the IG plant Rottweil remained, since it could not be separated bodily, with the IG, but worked for all intents and purposes on the payroll of the DAG. (see Affidavit Dr. Heinrich FINK, GAJEWSKI Exh.12, GAJEWSKI Doc.50, GAJEWSKI Doc. Book III, page 32).

As far as the capital-share of the IG in the DAG is concerned, Prosecution and Defense seem to be in agreement that this share, as far as capital is concerned, was not quite 50% of the entire capital, that however the preferred stock in the hands of the IG constituted a simple voting majority in the possession of the IG and not a qualified majority as required for numerous resolutions by the German law concerning joint stock companies (for instance the possibility of fusion provided for in the syndicate agreement).

2. The Relationship between DAG. and I.G.
as it took shape in practice.

On the basis of a gentlemen agreement, concluded at the time of the signing of the syndicate-agreement, between Geheimrat BOSCH, the defendant SCHMITZ and the general manager of the DAG., Dr. Paul MUELLER, the conclusion of the syndicate-agreement was not intended to hamper the DAG in the independent conduct of its business (in this respect see Statement GAFENSKI of 2 March 1948, record E.p. 8221, G.p. 8293; furthermore Exh. 334, NI-5187, Book 12, E.p. 126, G.p. 107).

This was explicitly laid down also in Art. 1 of the syndicate-agreement (Exh. 17, NI-5827, Book 2, E.p. 56, G.p. 44), since it was made clear there that the responsibility under the stock laws of the DAG administrative organs is not affected by the syndicate-agreement, and that the consent of the I.G. was necessary only for such business transactions as went beyond the scope of normal business operations. (The fact that also this latter regulation in practice was less and less adhered to in the further course of events, and that it was not applied at all with regard to military matters, is evident from pages 12/13 of this closing brief.

Then, in 1939, the technical organization of the I.G., in addition to the hitherto existing regional subdivision according to plant groups, was supplemented by a subdivision according to production groups by the formation of the three Sparten, and, in the process,

"As far as I can judge it, Herr Dr. Fritz GAJEWSKI had an insight into the conditions of the DAG-Konzern only insofar as this insight was granted him by Herr Dr. Paul MUELLER."

These statements are still emphasized by the affidavits of executives of the DAG. The witness Dr. SCHMIDT (Defense Exh. 2, DAG.Doc. Book 1, p. 3) stated with regard to the incorporation of the DAG into Sparte III of the I.G.:

"However, this did not mean that the chief of Group (Sparte) III was in charge of this company, or that the chief of Group (Sparte) III was responsible for it. With the important corporate bodies of the I.G. Herr Dr. MUELLER himself represented the interests of the DAG."

He refers in this connection to a conference which had taken place shortly after the formation of the Sparten between Geheimrat BOSCH, Dr. MUELLER and Dr. GAJEWSKI, in which, at Dr. MUELLER's request, the relationship between him and Dr. GAJEWSKI was clarified and it was decided that he was not subordinate to Dr. GAJEWSKI. Questioned by the prosecution with regard to this point, the witness SCHMIDT in his cross-examination of 30 April 1948 (record E.p. 13101, German p. 13252) explicitly stated that as a result of BOSCH's decision the demarcation between Dr. GAJEWSKI's and Dr. MUELLER's jurisdiction was fixed in the sense that Dr. Paul MUELLER was the one to be solely and exclusively competent for the management of the DAG.

Moreover, when cross-examined by the Prosecution on 6 May 1948, he testified that this decision concerned the independence of the DAG in the conduct of business matters, as laid down in Article 1, of the Common Interest Agreement, and that the IG then had to be asked when basic questions were at issue (Engl.Tr.p. 13102 - 13103, Germ.Tr.p.15107/8). The fact that this did not apply to the field of the so-called "militaria" will be shown in detail later on.

In this connection, the witness Dr.SCHMIDT additionally drew attention to the Prosecution Exhibit 2339 - ET-13534) with which he was confronted during his cross-examination, and stated that the functions of Dr.GAJEWSKI with respect to the DAG, in his opinion, could not be defined any better than by this up-to-date document. This is a letter from the Film factory of Wolfen, dated 13 March 1945, to the competent Kreisleitbefugung with a request to release Dr.GAJEWSKI from service in the Volksturm. This letter which, in view of the purpose aimed at, made Dr.GAJEWSKI's position look as important as possible, in particular as regards productions important from armament and military angles, states that Dr.GAJEWSKI was merely a liaison agent between the IG and the DAG. Yet one of the plants enumerated as being under his control was a part of the DAG. Moreover, the number of the personnel stated therein as being cared for by Dr.GAJEWSKI does not include the workers and employees of the DAG. In contrast, for example, to the firm of KALLÉ and Co., the DAG is not even mentioned in this letter as belonging to Sparte III, which is the best proof for the fact that the organizational incorporation of the DAG in Sparte III

was considered a mere formality by even the closest cooperators of Dr.GAJEWSKI, namely by the signers of this letter, for which reason the DAG was not mentioned as belonging to Sparto III, although, beyond any doubt, this would have been a very good argument for the reasons of the request contained therein.

The subjects of the Heidelberg conference, which the witness SCHMIDT discussed, are also confirmed by the witness Heinrich LORE, Director of the DAG (Defenses Exh.3, DAG Doc. 3, DAG Doc. Book I, p.11) who had especially close working and personal connections with Dr.Paul MUELLER. In addition, this witness has confirmed that Dr.MUELLER, from the beginning of the Common Interest agreement onward, always championed the basic independence of the DAG concern and that he also achieved his aim in this respect. He points to the fact, moreover, that the DAG had eminent technical experts at its disposal in this field, in particular in the person of Dr.MUELLER; experts who could not be matched by any man of the IG, for which reasons the DAG was actually absolutely independent in the field of explosives. For this reason, the IG never interfered with his, the witness', own field of work, namely with the sale of explosives for commercial purposes, and the actual business policy was exclusively designed by the DAG.

The same line is followed by the affidavit of the witness Heinrich SCHINDLER (Def.Exh.4, DAG Doc.4, DAG Doc.Book I, p.15) who was also a director and the leading engineer of the DAG and who also confirms the Heidelberg conference and says the following with respect to his field of work:

"that the DAG actually led more or less a life of its own in technical fields."

Finally, the witness for the Prosecution, Dr. STUSS, in the afternoon session of 9 October 1947 (Engl.Tr.p.1926, Germ.p.1915), when cross-examined, confirmed in conclusion that the IG "had not the least influence on the DAG in technical matters."

These statements tally completely with the statement made by the defendant GAJENSKI during the session of 2 March 1948 (Engl.Tr.p.8219 - 8220, Germ.p.8291 - 8294). As regards the Heidelberg conference, Dr. GAJENSKI, in supplement, added that Geheimrat BOSCH, after the conclusion of the conference, told him

"that the agreements mentioned before contained the promise that Dr. MUELLER was to remain independent, completely independent, and Dr. SCHMITZ confirmed this to me later." (Engl.Tr.p.8221, Germ.p.8294).

Obviously in order to refute the afore-mentioned statements of the witnesses Dr. STUSS and SCHINDLER with respect to the separate life of the DAG in technical fields and to the non-existence of any IG-influence on the DAG in technical matters, the Prosecution asked the witness Dr. SCHMIDT on 6 May 1948, whether there was any cooperation in technical fields between the I.G., i.e. Sparte III, and the DAG. The witness first answered this question in the affirmative, but, during the re-direct examination by the Defense, he stated that he was not

informed about the cooperation with Sparte III in the technical fields, and, on the other hand, gave some examples of cooperation in other fields, in particular in the field of rayon fibre, where the work of the IG and of the DAG overlapped and where the DAG on a large scale used semi-finished products of the IG in its rayon plants. Quite apart from the fact that the witness SCHMIDT, not being a technician, cannot contribute very much to the answering of this question from his own knowledge, this cooperation in technical matters as stated by him is by no means contradictory to the fact that the DAG led a life of its own in technical matters and that the IG did not exert any influence on the DAG in these fields. The witness SCHMIDT expressly pointed to the fact that such cooperation consisting of an exchange of experiences between firms working in the same fields or maintaining relations of supplier and consumer were absolutely usual. It would have taken place also if there had not been any Common Interest agreement, just as the DAG constantly exchanged experiences with its customer firms without any of these firms having belonged to its Konzern. Finally the witness said that he had no knowledge at all about any cooperation in technical fields, in the field of explosives and in particular in the field of military explosives with the IG and mainly with Sparte III, but that he could well imagine that experiences were exchanged about the utilization of certain raw materials for which there were different procedures, but that he could not make positive statements to this effect. (Engl.Tr.p.13656 - 13659, Germ.p. 13932 - 13935).

In order to prove the existence of an actual influence on the technological development of the D.A.G., the Prosecution refers in particular to the circumstance, accentuated by the witnesses Dr. STRUSS and DENCKER, that the D.A.G. was obliged to have their scheduled new investments approved by submitting so-called "credit demands" to the Technical Committee of the I.G. (T.E.).

According to Dr. STRUSS (Exh. 391, NI-9487, Book 15, E.p.65, G.p. 71), credit demands concerning investments for new plants of a military character, from about the beginning of the war onwards, were no longer presented at all or only ... very irregularly. The witness, when questioned in the afternoon-session of 9 October 1947 (record E.p.1922, G.p.1913), admitted, however, that he was unable to make any precise statements as to whether credit demands had been submitted at all to the T.E. for militarily important installations. He thought it quite possible that this was not done in view of the D.A.G.'s obligation to secrecy.

The witness DENCKER, who in his affidavit of 7 June 1947 (Exh. 50, NI 7239, Book 2, E.p.53, G.p.41) testified that the T.E. had to decide on all credit demands of the D.A.G. for the purchase of new equipment and replacements, and that the I.G. in regard to scheduled new investments could gain the majority control of D.A.G., modified that statement during his interrogation in the morning session of 17 October 1947 (record E.p. 2319, G.p.2311) in the direct examination by the Prosecution as follows:

"as far as the granting of credits for new plants is concerned, I recall that for the explosives field they were not submitted to the TEA. The theoretical possibility of gaining the majority control of DAG in respect to scheduled new investments by the TEA could refer only to credits which were submitted to the TEA."

(See also record E.p. 2324, G.p. 2316).

This is corroborated by the affidavit of SCHINDLER (Defense Exh. 4, DAG-Doc. Book I, p.15), whose statement clearly indicates that credit demands had to be submitted only with respect to new investments of a civilian character and that even/ef this kind were submitted to the TEA only in part during the war and were, moreover, approved by Dr. Paul MEHLER on his own responsibility.

The witness SCHMIDT (Defense Exh. 5, DAG-Doc. 5, Doc. Book I, p. 20) expresses himself to the same effect:

"Dr. MEHLER was a member of the technical committee where he himself represented the so-called credit applications of the DAG. No credit applications, however, were submitted to the technical committee which in any way were of military nature. The technical committee did not receive any information about expenses in connection with the military which was solely a matter concerning the DAG."

During Dr. SCHMIDT's cross-examination on 30 April 1948, the Prosecution confronted him with Prosecution Exh. 2156 (NI-14099), (record E.pp.13109/10, G.pp.13312/14), which shows that Dr. MEHLER himself,

at Dr. GAJENSKI's instigation, represented the credit demands of the DAG in the TEa since March 1934, and asked in this connection whether this regulation had not been made solely in the interest of organizational simplification. Concerning this, the witness Dr. SCHMIDT stated that the credit applications were submitted as before via Sparte III, adding in the re-direct-examination by the Defense on 6 May 1948 that Dr. MEHLER presenting reasons in the TEa was the best procedure, since he as an expert could best set forth the necessity of the funds applied for (record E.pp.13651-55, G.pp. 13927-32).

The Prosecution, in order to prove a particularly close connection between DAG and IG, has finally referred to the sales-tax litigation which the DAG carried on in agreement with the IG to get the deliveries between the two firms exempted from the payment of a sales-tax.

(For that see Affidavit HENCKEN of 7 June 1947, Exh.50, NI-7293, Book 2, E.p.53, G.p.41; furthermore Doc. NI-11746, Exh.1943; Excerpts from the records of the tax-proceedings).

The witness HENCKEN, during his interrogation by the Prosecution on the morning of 17 October 1947 (record E.p. 2318, G.p.2311), explicitly pointed out that in his affidavit he had not given by any means a description of the actual conditions, but that he had merely depicted as far as he remembered what arguments the DAG had put forward in the tax-proceedings to prove its character of an affiliated company. (Organisationschaft).

He emphasizes:

- * In practical matters, the control of Dynamit A.G. by I.G. Farben was not as extensive as was theoretical possible.*

In his affidavit of 1 December 1947 (Defense Exh.5, DAG-Doc. Book I,p.18), the witness Dr. SCHMIDT defined his position with regard to this question and, after the experts from the records of the tax-proceedings had been introduced, supplemented his exposition by another statement dated 19 March 1948 (Defense Exh. 160, DAG-Doc.28, DAG-Doc. Book III, p.1). The result of his statements can be summarized in the sense that the statements made during the tax-proceedings were allegations by the parties concerned, allegations, which had been made for a definite purpose (namely, recognition of the character of an affiliated company (Organsellschaft) in matters of taxation).

The witness points to the fact that the DAG, in the course of a lawsuit in which the plaintiff contended that the DAG was too strongly dependant on the I.G. , had successfully advocated the opposite viewpoint going as far as the Reichsgericht. The witness maintains fully and completely his description of the actual conditions made in his statement of 1 December 1947 (Defense Exh. 5, DAG-Doc.5,DAG-Doc.Book I, p.18), in which he depicts in detail the independence of the DAG management. This statement has been corroborated particularly by the decision of the Oberfinanzpräsident Köln dated 3 September 1940 (Exh.1943, NI-11746), which is based on especially intensive and careful inquiries made by that agency. On page 14 of the original, it reads:

"The production programs of the DAG and of the DAG enterprises form a separate and independent group within the frame-work of the IG-Konzern. The IG and the DAG are two economic enterprises of equal rank and placed side by side on the basis of syndicate Agreements and Agreements for the Pooling of Gains, but remain independent as regards their production programs, and neither the one nor the other may be called the dominating top company or the dominated affiliated company."

For the rest, the Defense is of the opinion that there is no need for a detailed discussion of the very voluminous material in this tax litigation, because one thing is indubitably true: even in this case in which the DAG was interested in pointing its ties to the IG as vividly as possible in every respect, not the least attempt was made to say that there was any dependence or control in the only sector of the activities of the DAG which is of interest here, namely in the military field.

In this respect, the witness SCHMIDT has said in his affidavit of 19 March 1948 (Def. Exh. 160, DAG-Doc.28, DAG Doc., Book III, p. 1) that it would have eased the situation in this litigation to a very great extent if the DAG had been able to say that Dr. GJESSE had influence on military matters because the DAG had to invalidate the following argument :

- * that in our case there could not exist a complete dependence on the IG, because we conducted such an important part of our business completely independent^{ly} and without consulting the IG."

The fact that the D&G actually did not deny its independence in this field in the requests submitted in the course of the turnover-tax litigation, in particular is shown in pages 25/26 and 47 of the original of the Prosecution Exhibit 1942 to which express reference is made herewith. This fact was also mentioned in the decision of the Cologne Oberfinanzpräsident on page 9/10 of the original. In this connection the fact is stressed that the said elaborations of the Oberfinanzpräsident were by no means juridical evaluations the probative value of which could seem doubtful, but the findings of actual facts which were not only based on the presentations by the parties but also on the very careful investigations of the actual conditions by the tax authorities themselves.

Since the Supreme German Taxation Court (Reichsfinanzhof) only investigated the legal bases of the decision of the lower Court and was bound to the facts established by the lower Court in its own decision, these findings as to actual facts are not affected in their values by the judgment of this Court.

In order to substantiate its interpretation of the existing close contact between the IG and the D&G, the Prosecution has additionally submitted a number of contemporary documents on which the Defense has given its opinion. The Defense believes that it will not be necessary to deal in detail with all these documents within the framework of this Closing Brief.

and restricts itself to compare in the following the incriminating documents, unless they had to be treated in detail in another connection, with the refuting or explaining extenuating material individually and separately. These documents of the Prosecution have one thing in common, namely, they establish business connections between the two firms in one definite individual field and in one concrete case. Such connections existed beyond any doubt, but the cases are neither typical of the nature of the commercial cooperation, nor are they suitable for proving that the cooperation was such that the defendants were enabled to form a vague opinion with respect to the activities of the DAG, especially in the field of gun powder and explosives.

- 1.) Letter from Dr. Paul MUELLER, D.A.G., to Dr. KRAENZLEIN, I.G.-Hoechst, dated 9 December 1935, Doc. No. NI-6498.
Prosecution Exh. No. 111;
Compare in this connection:
Affidavit by Heinrich SCHINDLER of 3 December 1947, D.A.G.-Doc. No. 24, Defense Exh. No. 24.
- 2.) Letter from Dr. Paul MUELLER, D.A.G., to Director LUDWIGS, I.G.-Frankfurt, dated 13 April 1940, Doc. No. NI-6345, Prosecution Exh. No. 327;
Compare in this connection:
Affidavit by Franz Anton GIERLICH, dated 3 December 1947, D.A.G.-Doc. No. 25, Defense Exh. No. 25.
- 3.) Affidavit by Dr. Ernst STAUSS, dated 30 August 1947, Doc. No. NI-9487, Prosecution Exh. No. 391, concerning the special commission said; Compare in this connection:
Affidavit by Heinrich SCHINDLER, dated 3 December 1947, D.A.G.-Doc. No. 26, Defense Exh. No. 26.
- 4.) Circular by the Vermittlungsstelle II of the I.G. Farbenindustrie (I.G. Farben's military liaison office), dated 23 March 1937, Doc. No. NI-4625, Prosecution Exh. No. 329;
Compare in this connection:
Affidavit SCHINDLER, dated 24 February 1948, D.A.G.-Doc. No. 31, Defense Exh. No. 163, D.A.G.-Doc. Book III, page 12.
- 5.) Letter from Dr. Paul MUELLER to Dr. GJESKI, dated 22 October 1935, Doc. No. NI-13532, Prosecution Exh. No. 1936;

Compare in this connection:

Affidavit SCHIMMER, dated 25 March 1948, D.A.G.-Doc. No. 32,
Defense Exh. No. 164, D.A.G.-Doc. Book III, page 15.

- 6.) Doc. No. NI-13533, Prosecution Exh. No. 1937, containing a
number of letters and a file memorandum;

Compare in this connection:

Affidavit by Heinrich SCHIEDLER, dated 16 March 1948, D.A.G.-Doc.
No. 33, Defense Exh. No. 165, D.A.G.-Doc. Book III, page 17.

- 7.) Reply by Dr. WERTER, dated 13 March 1937, to Dr. Paul HUELLER's
letter of 12 March 1937, Doc. No. NI-13571, Prosecution Exh.
No. 1940.

Compare in this connection:

Affidavit by Friedrich DUEHNING, dated 25 March 1948, D.A.G.-Doc.
No. 34, Defense Exh. No. 166, D.A.G.-Doc. Book III, page 22 and
Doc. Book II Dr. WERTER, Exhibits 55 - 61, Doc. 599 and Documents
581 - 586, page 30 - 45.

- 8.) File memorandum by the Central Finance Administration Office of
the I.G. in Berlin, dated 6 August 1938, Doc. No. NI-13513, Pro-
secution Exh. 1938.

Compare in this connection:

Testimony GAJESKI, record of 3 March 1948, English page 8298/99,
German page 8380.

- 9.) List of the business transactions of the 3 Sparten of the IG and
affidavit Dr. STUSS, Documents NI-14273 and 14 499, Prosecution
Exhibits 1941 and 1942.

Compare in this connection:

Cross-examination Dr. STAUSS, record dated 6 May 1948,
English page 13617, German page 13912.

- 10.) Letter from the Legal Division of the I.G., Berlin NW 7,
to the D.A.G., dated 2 May 1938, Document No. NI-13 516, Exhibit
1945.

Compare in this connection:

Testimony G. JESKEI, record dated 3 March 1948, English
page 8310, German page 8392/93.

3. knowledge of the I.G. and in particular of the defendants SCHMIDT and GUTTSKI of the transactions of the DAG in the armaments business.

If it is shown therefore, that the conclusion of the syndicate-agreement did not imply a giving up of the independence of the DAG so far as the management of their business was concerned and that there existed no control of the activity of the DAG in the technical sphere either, particularly in regard to the manufacture of military products, the next step is to go into the question to what extent the I.G. as such or particular individuals, and in particular the defendants SCHMIDT and GUTTSKI, were informed about the general development of business or particular individual transactions within the DAG, and whether this information was such as to afford the recipients of these reports an insight into the activities of the DAG within the German rearmament.

The Prosecution very thoroughly cross-examined the witness SCHMIDT who had commented in behalf of the defense on this question of knowledge in his affidavit of 1 December 1947 (Defense Exhibit 7, D.A.G. Doc. 7, D.A.G. Doc. Book I, page 26). In so doing it got the confessions - very plain and obvious though they were - confused by asking general and generalizing questions in which the various kinds of reports were mixed up. The defense, therefore, attaches particular value to a thorough discussion of this point which it subdivides on the following

lines:

- a. Reports to the Central Financial Administration of the I.G.
- b. Reports to the Aufsichtsrat and in particular to the defendants SCHMITZ and GAJEWSKI in their capacity as members of the Aufsichtsrat,
- c. The other information conveyed to the defendant SCHMITZ.
- d. The balance sheet audit reports of the D.A.G.

Concerning a:

In his afore-mentioned affidavit of 1 December 1947 (Defense Exhibit 7, D.A.G. Doc. 7, D.A.G. Doc. Book I, page 26) the witness SCHMIDT confirmed that there existed no current reports to the I.G. on the normal business transactions of the D.A.G., whereas, on the other hand, reports were submitted at regular intervals on turn-overs, receipts and disbursements and other financial transactions. As shown by the cross-examination of the witness SCHMIDT of 30 April 1948 (English Record page 13 112 - 14, German Record pages 13 316 - 13 319) and by the re-direct examination by the defense of 6 May 1948 (English Record pages 13 659 - 62, German Record pages 13 936 - 39) these reports were forwarded to the Central Financial Administration of the I.G. in Berlin and not to the Vorstand of the I.G. Despite repeated questioning by the Prosecution the witness was not able to confirm a transmission of these reports to other agencies. As regards the wording and the contents of the reports the witness, as is also shown by the afore-mentioned

passages of the record, could not make any comments. In particular, he did not know whether the reports on the turnovers - which at any rate certainly had not the character of sales reports with particulars on merchandise sold, names of the consignees, and other details - just contained the total turnovers in round figures or whether it was subdivided by production branches such as synthetic material, explosives etc. (see English Record page 13 660/61, German Record page 13 939). Nor was he in a position to state whether these reports on turnovers contained the military deliveries and, if so, whether lumped with the explosives for civilian use or separately. On the other hand the witness clearly confirmed (see English Record pages 13 661/62, German Record page 13 939) that these purely financial reports contained no particulars on production, on the putting into operation of new productions, on planning particularly in the military sphere, or any other particulars which might have served as clues to a knowledge about the activities of the D.I.G. in the sphere of armament.

In regards other current reports to the I.G., witness SCHMIDT, in Defense Exh. 7, stated that -

"there was no reason for more extensive, regular reports, because the work of the I.G. and the D.I.G. was completely separated."

In his affidavit of 4 May 1945 (Defense Exh. 237, D.I.G. Doc. 40, supplement to D.I.G. Doc. Book III, page 45), the witness Willi HELPERT also commented on these so-called

financial reports, transmitted, among others, to the Central Financial Administration by the D.G. He states that he personally used these reports which were regularly transmitted by the D.G. as well as by very many other affiliated firms to draw up the so-called financial plan which was for the purpose of furnishing a survey of the presumable receipts and the presumable financial requirements of the concern for the next six months. The witness states:

"In the financial plan, only the round figures were taken by me or by my department from the individual reports. Neither Geheimrat SCHMITZ nor Dr. ILGNER received the individual data from me, as for instance the financial reports from the D.G." (underlined by us.)

On the one hand this statement of the witness HELPERT proves quite conclusively that these reports supply purely financial information; at the same time it proves that the data transmitted to him, as for instance the financial reports of the D.G. which are here under discussion, were used only by the witness himself and not submitted by him either to the defendant SCHMITZ or the defendant Dr. ILGNER.

At the same time the affidavit of Franz Anton GILLIGS of 9 May 1943 (Defense Exh. 286, D.G. Doc. 39, supplement to D.G. Doc. Book III, page 41) shows, that the D.G. did not normally send copies of these reports directly to the defendant SCHMITZ, and that a change of this practice did not take place until 1944, probably as from 1 April 1944. From this time onward, a copy of the reports was sent to Heidelberg to the defendant SCHMITZ.

because, on account of the conditions of war and through enemy action, much mail had been lost and because the communication between the Central Administration of Finances in Berlin and the defendant SCHMITZ living at Heidelberg at that time had become very difficult already.

1d b.)

The defendants SCHMITZ and GIERLICH were members of the Aufsichtsrat of the D.I.G. SCHMITZ from 1926 - 1945, being the chairman from 1933 onward, and GIERLICH from 1936 - 1945. (cf. affidavit Franz Anton GIERLICH of 19 December 1947, Def. Exh. 6, D.I.G. Doc. 6, D.I.G. Doc. Book I, p. 24, which by the way discloses that the Aufsichtsrat of the D.I.G. in the years between 1926 and 1947, had at least 13 and never more than 28 members, and that never more than three were representatives of the IG at the same time.)

As to the information received by the Aufsichtsrat, the witness SCHMITZ in his affidavit says (Def. Exh. 7, D.I.G. Doc. 7, D.I.G. Doc. Book I, p. 26) that the D.I.G. limited itself to submitting the local quarterly reports in writing and to convene a meeting of the Aufsichtsrat once a year. The witness then proceeds:

"Then the business of the D.I.G. became more and more influenced by military matters, about which we were also obliged to secrecy towards the Aufsichtsrat, we took that opportunity to dispense entirely with our quarterly reports. So then the Aufsichtsrat was given

a report only in the yearly Aufsichtsrat meeting. In this report we were not allowed to mention military matters."

At the beginning of his interrogation on 30 April 1948 (Encl. Tr. p. 13 094/96, Germ. p. 13 245/47) the witness SCHMITZ, in this respect, made the following supplementary statement: that, beginning approximately in 1935, the quarterly reports were no longer submitted to the entire Aufsichtsrat, but still to the chairman of the Aufsichtsrat who was Dr. Max von SCHINCKEL until the summer of 1938 who had nothing to do with the IG. When the defendant SCHMITZ became the chairman of the Aufsichtsrat in the summer of 1938 he received, in this capacity, once more the quarterly report in the same form as submitted to Herr von SCHINCKEL heretofore.

The subsequent quarterly reports submitted to the chairman of the Aufsichtsrat, i.e. to the defendant SCHMITZ, did not contain any factual information at all, but only turnover figures and figures on personnel. In the re-direct examination by the Defense, on 6 May 1948, the witness SCHMITZ confirmed these statements in detail (Encl. Tr. p. 13 562-67, Germ. p. 13 940 - 45).

These rectifying statements of the witness SCHMITZ are corroborated by the affidavit Franz Anton GIERLICH of 9 May 1948 (Def. Exh. 285, BIG Doc. 38, Supplement to BIG Doc. Book III, p. 12) in which the witness, at the same time, deals with the Prosecution Documents IG-15 163 and SI-15 162.

Summarizing, the following can be stated with respect to the information received by the defendants SCHMITZ and GJETSCHKE in their capacities as members of the

Aufsichtsrat:

As the defendant GAMBYSKI did not become a member of the Aufsichtsrat until 1936 and as the quarterly reports to all members of the Aufsichtsrat had already been stopped in 1935, he never received these reports and was informed only in the course of the yearly Aufsichtsrat meetings where military matters were not to be discussed, if he attended these meetings at all. The defendant SCHMIDT received the quarterly reports to the Aufsichtsrat until 1935 (i.e. as long as they were sent to all members of the Aufsichtsrat.) In 1930 he still received one report about the second quarter of 1933 made after the former pattern, and, subsequently, he only received the turnover figures and the figures on personnel every three months. By repeating the interrogation time and again and by asking questions which were kept quite generally, the Prosecution, during the interrogation of the witness SCHMIDT, attempted to attach to these reports a certain meaning to that effect that they imparted some knowledge of the D.I.G. activities in the armament field. In reply to these attempts and in answer to a closing question of the Defense the witness SCHMIDT said the following:

"Q. Let me summarize. In your opinion as member of the Vorstand of D.I.G., were these quarterly reports, in particular after 1935, suited to give the chairman of the Aufsichtsrat even a superficial impression of the conditions of production and the general work done by D.I.G. in the field of explosives?

A. No. Merely figures."

(English Record p. 13667, German Record p. 13945).

The witness Franz Anton GIERLINGS in his affidavit of 9 May 1948 (Defense Exh. 285, DAG Doc. 38, Supplement to DAG Doc. Book III, p. 42) answered this question as follows:

- * The sales surveys sent to Geheimrat SCHMITZ as Aufsichtsrat chairman from the 2nd quarter of 1938 onwards contained merely sales figures according to value, so that from these surveys, the sales as far as quantity is concerned could be understood neither in toto nor for the individual products.*

Incidentally, how unimportant the connections of the defendant SCHMITZ - even as Aufsichtsrat chairman - were for the practical work of the DAG, is best proven by the fact that the witness SCHENDLER, who as the chief engineer of the DAG was the competent man in the field of military reconstruction, had no contact whatever with SCHMITZ, as he stated during his cross-examination by the prosecution on 23 April 1948 (English Record p. 12351, German Record p. 12556).

Ad c:

As is shown by the affidavit SCHMIDT (Defense Exh. 7, DAG Doc. 7, DAG Doc. Book I, p. 26), every year financial conferences took place between the defendant SCHMITZ and the leading men of the DAG, which were limited exclusively to the commercial results of the

past business year. During the cross-examination of the witness SCHMIDT, the Prosecution showed him Doc. NI-15260 (Exh. 2341) (letter from the DAG to the defendant SCHMIDT dated 4 September 1944 concerning the financial status of the DAG), introduced at the same time, and asked him whether the defendant SCHMIDT was regularly informed in a manner corresponding to this letter. The witness was not able to give a concrete answer to this question; however he stated that, in view of the introductory sentence of this letter, he did not consider it probable that such reports were made regularly. In this connection the witness Franz Anton GIERLICH in his affidavit of 9 May 1948 (Defense Exh. 284, DAG Doc. 37, Supplement to DAG Doc. Book III, p.38) states unequivocally:

* I furthermore confirm that, according to information received by going through the files of the Auditing Department of DAG, reports of the kind of Prosecution Exhibit 2341 were only sent to Geheimrat SCHMIDT after 1 June 1944.*

Thus, this report also is a result of the already beginning German collapse, which caused the defendant SCHMIDT to try to gain a clearer picture of the business of the DAG, especially with the IG and with the banks which however, as the document shows, did not exist.

Ad d:

As regards the auditing reports of the DAG, the witness SCHMIDT stated that they were not available to the members of the Aufsichtsrat in that capacity. However,

as is also shown by Prosecution Exhibit 1816, NI-12740, the central accounting office of the IG until 1939 sent these reports to Geheimrat BOSCH, Dr. GAJESKI and to TLA Office and the Central Finance Administration; from 1940 on Geheimrat SCHMITZ replaced Geheimrat BOSCH as the recipient of these reports.

As Doc. NI-15062 (Exh. 2311) the Prosecution submitted excerpts of such an auditing report, namely for 1938, and questioned the witness SCHMITZ in great detail concerning it; here again it tried unsuccessfully to get from him an explanation of the contents to the effect that this report showed that the IG had been informed of the work of the DAG in the armament sphere. In fact, however, these auditing reports do not support the view of the Prosecution either. On the contrary, especially this report proves unequivocally that also the auditing company, in view of the secrecy regulations, had to exercise the utmost reticence in all questions concerning military matters.

This extended so far that, when listing the sales of the DAG, the individual products were not allowed to be named at all, and that also in the combination into production groups not civilian and military explosives were mentioned, but explosives A and explosives B, which, as the witness SCHMITZ stated in the witness stand on 6 May 1948 (English Record p. 13700/01, German Record p. 19999), meant civilian and military.

But as the witness confirmed at the same time this explanation of the letters A and B is not contained in the report itself so that the reader of the report who has no further information, cannot gain any insight into the significance of these two letters. (English transcript p. 13 712/13, German transcript p. 14 010/11).

Of course, in the discussion of the production of the single DAG plants it is generally stated whether the production of the individual factories is of a civilian or military nature, but here, too, every further information, as well as even the listing of items produced, capacities etc., is dispensed with. Hence the witness SCHMIDT also confirmed that this manner of reporting was in no way apt to give the recipient an idea of the actual happenings. (See English transcript p. 13 715, German transcript p. 14 012).

But this thesis of the Prosecution is most clearly refuted if one considers that the report in question comprises 92 pages and a large number of enclosures and that the two points treated above, which together do not even take up one page, constitute the only information on the activity of the DAG in the military sector. The recipients of these reports could therefore gather the fact from them that the DAG was integrated into the German rearmament. But the perusal of these reports would not have been necessary to learn this fact. For it was obvious for everybody in Germany, after the German rearmament had been publicly announced, that the biggest producer of civilian explosives would somehow be integrated into this program. But more than that

was not to be gathered from the above-mentioned informations, especially by such recipients who, for the rest, were not connected with the work of the DAG and, therefore, no exports. Above all, they did not admit of any conclusions as to the general conditions in the field of military powder and explosives.

In the Exhibit 1816 submitted by the Prosecution, II-12 740 (affidavit of Otto MEIERER of 28 November 1947), a survey of the transactions of the DAG from 1935 until 1942 is attached as enclosure B. In the first place this survey which has been compiled for the respective years on the basis of the auditing reports of the DAG, confirms that in these reports there is no mention of military transactions but only of explosives A and B as well as of ammunition A and B. Beyond this it must be stated that nobody in the IG and especially none of the defendants ever received such a survey but they always only received the auditing report for the year in question. Finally however, even this survey shows that the participation of the DAG, particularly in the field of explosives, was relatively low until the outbreak of the war and only increased during the war, i.e. after 1940.

If therefore appears from above explanations and from the compilation of the evidence that the DAG acted quite independently and without asking the IG, especially in the field of armament which is the only one of interest in this connection, even when questions of far reaching importance were involved, and, furthermore, that no such information was given as to enable the defendants, particularly SCHMIDT and GALTISCH, to

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to form even an approximately complete picture of the DAG's activity in this field. Hence the defendants lacked the slightest foundation on which to base the conclusion that, in view of the extent of the DAG's activity in the armament sector, an aggressive war on the part of the German government was to be reckoned with, as the Prosecution obviously wants to make out. These facts being as they are, there can still less be a question of their approving and therefore supporting a policy of aggression of the government which was unknown to them, by tolerating the activity of the DAG which was not known to them either.

4. The activity of the Company for the Utilization of Chemical Products, Ltd. (Verwertchemie) in the sphere of armament its relation to the Reich, (Verwertungsgesellschaft fuer Montanindustrie m.b.H.) to the DAG and to the IG.

If the foregoing statements apply even to the activity of the DAG in the sphere of rearmament, then the same applies to a much greater degree as regards the Company for the Utilization of Chemical Products, Ltd. (Verwertchemie), which was the centre of the armament production of the DAG-Konzern. This subsidiary company, founded in 1934 by the DAG, which at first served different purposes, at the beginning of 1937 took over as trustee the management of plants, which belonged to the Reich owned "Verwertungsgesellschaft fuer Montanindustrie mbH" in Berlin. (Exhibit 2312, NI-15063; according to this the dissenting testimony of the witness SCHMIDT on 30 April 1948, to the effect that the Verwertchemie was originally owned jointly by the DAG and the Weasg, is therefore incorrect. (Engl. record p. 13122, German record 13326). Thus it was not the purpose of this company to construct and run plants of its own; rather, its function was to act exclusively as managing company (Betriebsfuehrungsgesellschaft) for Reich owned enterprises. It is indisputable that the Verwertchemie was a 100% subsidiary company to the DAG. This, however, does not mean at all that the DAG

or its employees working in the business management of the Verwertchemie were empowered to make independent decisions concerning the practical function of the Verwertchemie. As the witness SCHINDLER stated in the cross-examination on 28 April 1948 (E. record p.12784, G.record p. 13015), this is evident especially from the completely unusual manner of placing orders on the part of the OKH which, after all, was the only possible ordering agency. The starting or closing down of factories was specifically ordered in each case. Every order, even the most insignificant, was made out for a certain plant and not simply for the Verwertchemie. There was no initiative whatever on the part of the business management (Geschaeftsfuehrung) of the Verwertchemie to have an order carried out in one plant instead of another for reasons of economy to merge, for the sake of saving money, two similar orders placed with two different plants.

The extent to which the Verwertchemie was segregated even organizationally from the mother company i.e. the DAG, by order of the Reich authorities, is evident from the fact (as shown in the Pros.Edh.1943, NI-11746 (p. 13 of original) that, by orders of the Reich, the Verwertchemie was not permitted, from the taxation aspect, to be classed as an part of the DAG although it was a ^{100%} subsidiary company.

If this segregation applies even to the relations between Verwertchemie and DAG, then a connection between Verwertchemie and IG is altogether out of the question. The witness SCHINDLER, in his affidavit dated 18 December 1947 (defended Edh. 8).

DAG Doc. Book I, p.31) explains in detail that the plants built by the DAG^{by} order of the Reich, and run by the Verwertchemie must be strictly segregated from the business of the I.G., since the latter neither bore any responsibility for it nor had any possibility to influence it. The witness, in the first place, points out that the so-called Cover agreement between the Reich and the DAG concerning the construction of such plants, provided, in article 11, subsection 1, that the OKH was at any time entitled to run the plants itself or to have someone else run them, and he states that the armament office (Heereswaffenamt) made use of this right in practical instances, though not as a rule. In subsection 12 of the Cover agreement it is made clear specifically that all plants subject to this agreement are administered in trusteeship for the OKH. He refers to the existing strict secrecy regulations concerning the Reich owned plants which also applied to the IG and excluded the IG from being informed about these plants. So extensive were these obligations to secrecy that, for instance, a Vorstandsmember of the IG would have been able to visit a plant of the Verwertchemie only with the express approval of the armament office (Heereswaffenamt) or of the local headquarters. This, by the way, never happened.

For the sake of completeness, may I point out furthermore, that in regard to the financial expenses in connection with the construction of the Montan plants an inclusion of the IG and particularly of the TEA, was out of the question if only because all the necessary funds were provided by the Reich.

Accordingly the witness STRUSS, in his affidavit of 30 August 1947, (Exh. 391, NI-9487, Volume 15, English p. 65, German p. 71), also confirmed that new constructions erected by the Verwert-Chemie never went via the TEI.

In another sphere also, the segregation (Distanzierung) demanded by the Reich authorities shows up.

As is shown by the statement SCHINDLER (Defense Exh. 3, DAG Doc. 8, DAG Doc. Book I, p. 31) in connection with the affidavit by Franz Anton GIERLICH of 19 December 1947, (Defense Exh. 15, DAG Doc. 15, DAG Doc. Book I, p. 73), by the second last paragraph, from 1 January 1937 on the auditing of the Verwert-Chemie no longer was carried out by the Chemie Revisions- and Treuhand G.m.b.H. (Chemistry Revision and Trust Company) Berlin, which carried out the auditing for the DAG and most of its subsidiary companies also for the years from 1937 on, but by the Deutsche Revisions- und Treuhand A.G. (German Revision and Trust Company), to which the Reich authorities had delegated the auditing for such companies as were engaged in so-called heavy industry. As is shown by Prosecution Exhibit 2312, NI-15063, this change of auditing company occurred more or less simultaneously with the start of production of the first heavy-industry factory operated by the Verwert-Chemie.

The distinct separation of the heavy-industry factories built by the DAG and then operated by the Verwert-Chemie from the IG is also shown by the affidavit of the witness Franz Anton GIERLICH, dated 3 December 1947, (Defense Exh. 9, DAG Doc. 9, DAG Doc. Book I, p. 34), in which he states:

"Just like the planning and erection, as well as the management, of the Montan factories, the conclusion of relative agreements

was effected independently by the D.I.G. or Verwert-Chemie without the IG being informed about it. The secrecy stipulations (see, for example, Par. 14 of the cover agreement, dated 4 March 1940) did not permit of such agreements being submitted to the IG."

while, for the rest, the most important agreements of the D.I.G. as a Konzerngesellschaft of the IG, were transmitted to the IG Central Office for Agreements to check for possible clashes of interest.

In the cross-examination of the witness SCHMIDT, on 30 April 1948, the Prosecution confronted Dr. SCHMIDT with Prosecution Exhibit 353, NI-5685, (Volume 13, English p. 53, German p. 65) with the obvious intention of refuting this statement of the witness GIERLICH and of simultaneously showing that the IG was informed of the business transactions at the Verwert-Chemie (English Record 13, p. 124-26, German Record, p. 13 328-31).

In the re-direct examination by the Defense on 6 May, 1948 (English Record, p. 13 676-78, German Record, p. 13 954-56) the witness SCHMIDT explained unequivocally that the conversation at that time confined itself to purely legal questions of the system according to which agreements between the Reich and the companies operating heavy-industry installations were concluded, and that in this conversation the representatives of the IG were not informed by one word as to the details of the work of the Verwert-Chemie in the armament field, details such as production, sales, installations etc..... Furthermore the witness pointed out that already the date of this memorandum, i.e. January 1939, showed that until this date

the IG had not even known what the relationship between the Verwert-Chemie and the Reich authorities was as regards agreements.

Finally, to complete the picture, let me point out that the work of the Verwert-Chemie did not give any financial advantages to its mother company, namely the D.G., what-over, as the witness Dr. GILDE proves in detail in his affidavit of 2 December 1947 (Defense Exh. 16, D.I.G. Doc. 16, D.I.G. Doc. Book I, p. 83).

5.) Informing of the IG and particularly of the defendants SCHMIDT and GIEBOWSKI on the activity of the Verwertehemie..

Since not even the Prosecution itself asserts that the Verwertehemie on their part carried out any reporting to the IG, it only remains to be examined here whether and to what extent the DAG reported on the business activity of the Verwertehemie. In order to give a better survey the discussion will be sub-divided according to the same points of views as have been taken as a basis on page 19 of this Closing Brief for the description of the informing of the IG on the activity of the DAG.

a) Reporting to the Central Finance Administration of the IG.

The witness SCHMIDT could not make any appropriate statements as to whether the reports sent to the Central Finance Administration under the column "Finanzplan" (Finance Plan) (see p. 19/20 of this trial brief) did also contain the respective statements regarding the Verwertehemie. The Prosecution therefore, since it has not furnished any other proof either, still has to offer the proof in this respect. But then it attempted in a different way to get the witness SCHMIDT to make a statement on the information of the IG Berlin NW 7, i.e. the Central Finance Administration. Since the Prosecution's manner of proceeding in this point is typical of their treatment of this complex of questions, this procedure will be dealt with here in spite of the otherwise negligible importance of this point. After the witness SCHMIDT had not answered, to the satisfaction of the Prosecutor the question as to whether the DAG had not informed, already in 1937, the IG and particularly the IG Berlin NW 7 of the

activities of the Verwertchemie, he was confronted with Pres. Exh. 2340, NI-15 215 (Affidavit of Franz Anton GIERLICH of 21 April 1943) and he was asked at first whether he could say anything as to what this "correspondence" (in fact it was a matter of only one letter) was all about. After the witness had denied this question he was asked:

"Does this document refresh your recollection that there was considerable correspondence in that year between Dynamit I.G. and Farben with respect to the activities of Verwertchemie?"
(Emphasis supplied by us)

Then the witness replied in the negative there came the question:

"You mean the document does not refresh your recollection?"

Whereupon the witness once more reported that this was not the case. In fact there can be no question of such an extensive correspondence, as the Prosecution knew full well from their own findings. From the affidavit of Franz Anton GIERLICH of 9 May 1943 (defense exhibit 263, D1G Doc. 36, supplement to D1G Doc. Book III, p. 35) it appears that, during the period from 1 July 1936 through 31 December 1937, besides the letter of 14 May dealt with in Pres. Exh. 2340, only two more letters which, according to the point in question, are connected at all with the Verwertchemie, were sent to IG offices. One of the letters is addressed to the Central Tax Department of the IG and deals with a tax question, the other is addressed to the Central Finance Administration and deals with the tax for the promotion of exports which had been ordered by the government. In conclusion the witness states the following:

"I would like to say generally that also during the later years correspondence between D'G and IG Farben concerning questions of "Verwertchemie" never increased to a larger amount than at the time when I was charge of auditing. In addition to this, I can state that if indeed there was any exchange of ideas between D'G and IG. concerning Verwertchemie, at all -- as in the two preceding cases -- it was always a matter of one topical problem; we tried to benefit for our own process from the experiences of the competent IG Farben departments working on the same subject.

I can state with authority that no correspondence took place between the Vorstand of the D'G and IG Farben which contained any information concerning the use of Verwertchemie in the armament sector as its subject."

- b) Reporting to the Aufsichtsrat and particularly the defendants SCHMITZ and GAWERTNI in their capacity as members of the Aufsichtsrat.

In his affidavit of 1 December 1947 (Def. Exh. 7 D'G Doc. 7, D'G Doc. Book I, p. 26) the witness SCHMIDT states:

"The Verwertchemie was not discussed at all in the meetings of the Aufsichtsrat."

As to the quarterly reports after 1933, the Prosecution documents NI-15163 and NI-15162 disclose that the turnover figures also contained the military deliveries,

As to the quarterly reports after 1938, the Prosecution documents NI-15163 and NI-15162 disclose that the turnover figures also contained the military deliveries

including those of the affiliated companies, i.e. of the Verwert-Chemie. It must be mentioned here that both these documents are only excerpts from covering letters and that the Prosecution has not submitted the enclosures thereof which alone would have been suitable for forming a judgment on the extent of the information. During his re-direct examination by the Defense on 6 May 1948 (English Transcript page 13665/66, German page 13943) the witness SCHMITZ testified in this connection that he assumed, but did not know for sure, that the military figures were reported together with the private turnover in one figure. But even if they were given separately, it was at any rate a matter of overall figures to which the statement of the witness GIEHLICH, in his Affidavit of 9 May 1948 (Def. Exh. 285, DAG-Doc.38, Supplement to DAG Doc. Book III, page 42), applies, namely:

"The sales surveys sent to Geheimrat SCHMITZ as Aufsichtsrat chairman from the second quarter of 1938 onwards contained merely sales figures according to value so that from these surveys, the sales as far as quantity is concerned could be understood neither in toto nor for the individual products."

In this connection it must be stressed again that the turnover figures as such, even if they contained specifications, would not permit, especially a layman, to draw conclusions with respect to the field of gun powder and explosives.

Document NI-15162 discloses that, beginning 2 October 1939, i.e. after the beginning of the war, the breakdowns forwarded for the second quarter of 1939

listed the personnel of the Verwert-Chemie separately from the personnel of the other affiliated companies. The witness SCHMITZ, questioned in this connection by the Prosecution and by the Defense (English Transcript page 13152, German page 13440, and English Transcript page 13672/74, German page 13950/52), was not able to say anything about the reasons for this specification of the respective personnel from his own positive knowledge. His assumption that it was done because the number of personnel of the Verwert-Chemie had ^{a/}very pronounced and sudden upward tendency during the war and that the general intention was to impart a better survey by the breakdown, may be assumed here as correct. But at any rate, that what has been said with respect to the turnover figures, namely that they would not enable a layman to form a judgment without supplementary information will hold good even more so with respect to the numbers of personnel, let alone that this information was passed along only after the outbreak of the war at a time when the receiver of the report had even less possibility of bringing any influence to bear than before.

c: Other information received by the defendant SCHMITZ.

The fact, that the defendant SCHMITZ received information as stated in document NI-15260, Pres. Exh. 2341, only from 1 June 1944 onwards (cf. page 29 of this Closing Brief) makes any further dealing with this document superfluous.

d: The reports on the auditing of the balance sheets of the Verwert-Chemie and of the DAG.

In his affidavit of 19 December 1947 (Def. Exh. 15, DAG Doc. 15, DAG Doc. Book 1, page 78), the witness GIEBLICH states that, according to his knowledge, reports on the auditing of the balance sheets of the Verwert-Chemie, beginning 1 January 1937,

were no longer brought to the knowledge of any office of the IG. In his affidavit of 1 December 1947 (Def. Exh. 7, DAG Doc. 7, DAG Doc. Book I, page 26) the witness SCHMIDT once again expressly confirmed this fact as far as the defendants SCHMITZ and GAJEWSKI are concerned. The Prosecution, unable to invalidate this statement, attempted then to prove the knowledge of certain business matters of the Verwert-Chemie by submitting excerpts from the reports on the auditing of the balance sheets of the Verwert-Chemie as of 1936, Doc. EL-15063, Exh. 2312, and of the DAG reports as of 1938, Doc. EL-15063, Exh. 2311. But these very excerpts prove the correctness of the afore mentioned statements of the witnesses SCHMIDT and GIERLIGER, namely that the existing secrecy regulations did not permit the writing of reports which would actually have been worthy of being called reports.

In the afore said reports on the auditing of the balance sheets of the Verwert-Chemie as of 1936, the business activities of the Verwert-Chemie at issue in this connection are referred to in one sentence, namely:

"Since the beginning of 1937 it has been occupied with the manufacture of chemical products in plant-installations in Dornitz, which were leased to it by a Reich agency."

A report made in more general, evasive and meaningless terms could hardly be imagined. As already mentioned before, the IG did not any more receive reports on the auditing of the balance sheets of the Verwert-Chemie from 1 January 1937 onwards.

In contrast to this fact it is claimed in the affidavit of Otto HEILBRUNN (Exhibit 1816, VI-12740) under section 7

that the IG had also received the auditing-report of the Verwert-Chemie for 1937. As proof for this assertion the witness HEILBRUNN refers to the enclosure F of his statement which however does not contain any proof for his claim and which as already stated above is in fact incorrect.

Also the auditing-report of the DAG for 1948, submitted in evidence by the Prosecution, mentions - although consisting of more than 100 pages - the Verwert-Chemie only in one sentence which reads as follows

"In addition the Gesellschaft m.b.H. for utilization of chemical products, the basic capital of which is in the sole possession of the DAG manages as trustee for the company for the utilization of products ^{of the} /Montan Industrie G.m.b.H. Berlin, the following factories:

Doernitz	since 1 April 1946
Queen	since 1 July 1938
Hessisch-Lichtenau	since 1 June 1938
Clausthal-Zellerfeld since January,	
respectively	1 April 1939
Ueckermünde since 1 January, respectively	1 April 1939.

It is noteworthy that directly proceeding in this report the DAG owned plants are listed as well as the products manufactured by each plant at least according to military or civilian production - although without listing the details, whereas in the case of the Verwert-Chemie even this had not been done. The Defense refrains from arguing with the almost painful attempts of the Prosecution which tried in the cross-examination of the witness SCHMIDT by means of general questions

to achieve a statement concerning this point which would be of value. The Defense is of the opinion that the balance report as well as the transcript of the hearing of the witness SOEMMIG referring to this matter speak for themselves.

The practical effect on the IG of the above discussed "report" is proved by the statement of the witness Dr. STRUSS in his hearing on 13 April 1948. In the course of this hearing the above mentioned two excerpts from the auditing-report were submitted to the witness by the Prosecution in order to refresh his memory, after the witness had declared:

"I am not conscious of ever having heard the name of the Verwert-Chemie until I worked in the Control Office of IG Farben after the war."

(English transcript page 11326, German transcript page 11503).

Despite this endeavor to refresh his memory the witness stated in the further course of his hearing (English transcript page 11327/28, German transcript page 11505).

"... The name Verwert-Chemie did not remain in my memory and you must bear in mind that the name of Verwert-Chemie was of no significance to me at that time because nobody ever explained this name to me and nobody told me how and in what form this company was founded. . . . I must repeat that I consciously heard of the extent of the Verwert-Chemie and this abbreviated name Verwert-Chemie for the first time after the war."

Even after being shown additional documents, which in apparently comprehensive form contain amongst others also sales figures of the Verwert-Chemie, the witness remains adamant (English transcript page 11333/34, German transcript page 11512);

"From before the war I cannot remember the name "Verwert-Chemie" at all for the simple reason that it just did not mean anything to me. . . ."

"At any rate I must stick to my statement that I was not conscious of what was the matter at stake here."

These statements of the witness Dr. STEUSS are all the more important as the witness did preliminary work for the most important decisions of IG Farben in the Central Office and according to his statement (English transcript page 11329, German transcript page 11506) 250 auditing-reports were sent to him for this work. It is beyond doubt that the IG Farben in spite of occasional references had no knowledge of the general importance of the Verwert-Chemie in the field of armament but least of all knowledge in regard to manner, extent, and utilization purpose of the production in its details. The Prosecution submitted an affidavit of Helmut DEICHFISCHER dated 11 June 1947 (Exhibit 711, NL-10005, Book 37, English page 127, German page 136). In this statement the witness subsequently has made a list of the entire sales figures of the Verwert-Chemie from 1936-1943 on the basis of the DAG records made available to him in the Central Office of the IG Farben.

Apart from the fact that this data never came to the knowledge of the IG and in particular of one of the defendants in this form it must be pointed out that this list would have been at the most suitable for dispelling but by no means of creating any doubts regarding the activity of the Verwert-Chemie. In the last year of peace, in 1938, the total turnover of the Verwert-Chemie, according to this list, amounted to approximately 33 millions RM, whereas in 1943 it reached approximately 631 millions RM. The turnover in 1938, then, amounted to 5% of the 1943 turnover and began to rise steeply only during the War, in particular as from 1941 onward.

In order to obtain a really correct evaluation of the information transmitted to the IG on the activity of the Verwert-Chemie - it involved, for all practical purposes, at best just a few figures representing the value of turnovers, the names of a few manufacturers and, after the outbreak of the war, the number of employees - it must be borne in mind that the Montan plants - prior to the War at least - concentrated on construction, that is, on the erection of the plants and not on production. Of the things which happened in connection with the newly constructed plants, subsequently operated by the Verwert-Chemie, neither the IG nor anyone of the defendants could obtain any knowledge, quite apart from the fact that the funds were supplied by the Reich, because both for the supply of machinery and equipment and for constructional work contractors were given the job. The activity of the DAG in this connection is best compared with that of a firm of Consulting Engineers. The Prosecution did not bring any evidence at all to show that this activity is reflected in some way or other

in the reports of the DAG to the IG., and that the defendants might have obtained information through these channels.

But apart from that, even the most complete reports on the annual expenditures in the field of new constructions could not have enabled even an expert, and still less so the defendants who were no experts, to reach anything like reliable conclusions.

Depending on technical and terrain conditions, on the more or less solid construction, under consideration of the requirements of air raid protection and camouflage, according to the existing local difficulties of drinking water supply, sewerage and railroad connections, subsoil conditions, etc. the same production capacity may be achieved in one given case at only a fraction of the costs expended in another. Moreover the costs are largely determined by the extent to which the manufacture of basic products is, or is not, included in the operation of a particular plant. In any case, for all these reasons it is quite impossible to draw a conclusion from given amounts of money as to the production capacity achieved, the less so as no one at this stage knew what articles were to be manufactured. Such things are no more evident, say from the financial statement of an independent firm of Consulting Engineers, although it would still supply more information than was the case with the DAG, where the planning was only a part of the more comprehensive general framework.

In the foregoing comments reference has been made repeatedly to the fact that,

apart from reasons which had their origin in the actual organizational relations between the DAG and the IG., the secrecy regulations precluded the transmission of information to the IG and in particular to the defendants of the activities of the DAG and its subsidiaries in the field of the production of military explosives and powder which would have given them a survey of this field. This fact requires particular emphasis. The Defense, therefore, in submitting the affidavit of the witness von MUENCH of 13 March 1948 (Defense Exhibit 167, DAG-Doc.No.35, DAG-Doc.Book III, page 34) presented a fundamental inquiry into the secrecy regulations in force in Germany and their effects in practice. From 1935 till the German collapse the witness was head of a special group within the "Amt Ausland" Counterintelligence III of the OKW which had to prepare expert opinions for courts and authorities commenting objectively on the question whether any particular action constituted a violation of the secrecy regulations. This group was the only agency in Germany authorized to make such military reports. The special knowledge of this witness in the questions he is dealing with may therefore be regarded as beyond any doubt. In his expert opinion the witness discusses at length the secrecy regulations and their effects in practice. He arrives at the following conclusions:

"In view of my familiarity with the matters discussed above I consider it out of the question that the Vorstand of a large enterprise,

such as the IG Farbenindustrie Aktiengesellschaft, received detailed information about matters concerning subsidiary companies of the first or second degree which were bound to secrecy because military offices were interested in their activities; I consider it out of the question, because this would have meant a violation of the secrecy regulations."

The same, however, must apply to activities within the companies themselves, because - as already intimated - even the individual members of the Vorstand were not allowed to discuss measures of a particularly secret nature with their colleagues, unless these, too, had to be included officially in their implementation. This point of view alone determined the extent of information supplied, but not any obligations which resulted from other aspects, as for instance provisions of the stock laws, standing rules of Vorstand and Aufsichtsrat, or similar regulations, as the secrecy had precedence over all other regulations.

6. The role of the DAG-concern within the framework of the German powder- and explosive manufacture and the relation between the production of the DAG-concern for military purposes and the production for civilian purposes.

The preceding statements have established that the I.G., that is to say the Defendants, in particular SCHMITZ and GAWJUSKI, had no influence whatever on the DAG either from the administrative or technical point of view with regard to its activity in the field of re-armament and that moreover they did not have any knowledge of the activity of the DAG in this production field, which would have been sufficient to give them an even approximatively complete survey. In view of this fact the opinion of the Prosecution that the Defendants, on the basis of definite knowledge of the activity of the DAG within the framework of re-armament, had to come to the conclusion that the German Government was planning an aggressive war, is unjustified.

If in spite of this the evidence material of the Defense concerning the actual extent of this activity and its relation to the entire German production in the field of gunpowder and explosives is evaluated below, this is done in order to show the incorrectness of the material submitted by the Prosecution ^{to} and prove that even objectively seen the activity of the DAG in this field was within very modest limits than is claimed by the Prosecution. Further, it will be proved that before as well as during the war the main weight of the DAG production

lay in the field of civilian explosives and of its other civilian production, for instance artificial material.

The witness Heinrich SCHIEDLER has drawn in his affidavit of 19 December 1945 (Def. Exh. 13, D.A.G. Doc. 13 I and II, D.A.G. Doc. Book I, p. 58) the entire picture based on the pertinent figures. The witness compares in his statement Doc. D.A.G. 13 I the entire productive capacity of military explosives in Germany during the period since 1930 with the production of the D.A.G. and draws the following conclusion:

"Of the entire production from 1930 until the end of the war of approximately 1,020,000 tons, about 180,000 tons (16,7 %), were produced during the time from 1930 until the beginning of the war, whereas the production from the beginning of the war until the end amounted to about 900,000 tons (83,7 %).

Of the entire production from 1930 until the end of the war the production of the D.A.G. amounted to 102,000 tons (9,4 %).

Taking into consideration mixtures instead of the pure military explosives, as they were actually used for filling of ammunition, the following emerges:

"Of the entire filling capacity from 1930 until the end of the war of about 1,700,000, the filling capacity during the period from 1930 until the beginning of the war amounted to 85,000 tons (5 %).

whereas the production from the beginning
of the war until the end amounted to about
1,615,000 tons (95 %).

Of the entire production from 1930 until the
end of the war the DaG produced approximately
6,000 tons (0,35 %).

The survey in document DaG 13 II which has been drawn up on the
same basis with regard to the entire capacity of military gun-
powder in Germany from 1930 until 1944 shows the following:

"Of the entire production from 1930 until
1944 of about 1,040,000 tons the production
for the period from 1930 until the beginning
of the war amounts to about 190,000 tons (18,3 %)
whereas the production from the beginning
of the war until the end of 1944 amounts to
about 850,000 tons (81,7 %).

Of the entire production between 1930 until
1944 the DaG group produced about 112,000 tons (10,8 %)"

(see in this connection also the affidavit SCHULZKE dated
24 February 1948 (Def.Exh.161, DaG Doc.29, DaG Doc.Book III,
p.7) where he proves in detail his expert knowledge on the
basis of which he submitted the two affidavits DaG 13 I and II).

In his affidavit of 19 December 1947 (Def.Exh.12 DaG Doc.13,
DaG Doc.Book I p.54) the same witness compares the production
of civilian explosives to the production of military explosives
and gunpowder within the DaG and its daughter-companies with
majority controls (plants not owned by the Reich). Thus it
is shown that the capacity

of civilian explosives even at the height of the war passed in quantity the combined production of military explosives and gun-powder and that in the course of the war the civilian part of the production increased absolutely and in percentage.

7. The relations of the IG with the firms of BASF and

 WOLFF & Co. and their subsidiary companies Spreng-

 chemie and EIBA.

In the cross-examination of the witness Heinrich SCHIEDLER of 23 April 1948 (English Record page 1236 and following pages, German Record page 12 563 and following pages), on the affidavits, dealt with in point 6 of this Closing Brief, concerning the production of the IG in the field of military explosives and powder, the Prosecution thoroughly questioned the witness as to the production figures and plants on which he based his statement. Subsequently, on 28 April 1948, (English Record, page 12717, German Record page 12923 and following pages) it asked the witness in particular what percentage resulted in regard to the share in the entire German production of military explosives and powder, putting together the productions of the BASF, the Tölg and WOLFF & Co., and, furthermore, the productions of the Reich-owned plants operated by their subsidiary companies Vervort-Chemie, Sprengchemie and Eiba. This sort of questioning is a juggling with figures and quite irrelevant for the present trial. It can have no other purpose than to furnish, - by a technically unjustified putting together of production figures of different groups of manufacturers - a picture of the participation of the IG combine in the German production of explosives and powder which, while containing very impressive percentages, is technically unjustified. The Defense holds to the theory that in keeping with the principles of the IMT only such facts can be laid to the charge of the defendants in connection with Count I which they know

and which came within the sphere of their personal responsibility. As regards the Vermont-Chemie it has been explained at length in subsections 4) and 5) of this Closing Brief that those conditions do not exist so far as this company is concerned. Regarding the firms of Hasag and WOLFF & Co., the Prosecution did not make the slightest attempt to prove that these companies were in any way dependent on the IG as regards their business transactions or even that they were subject to a supervision by the IG or any of the defendants. It furthermore did not furnish any proof to show that business activities within these companies had ever come to the knowledge of the IG as such or of the defendants.

In contrast thereto, the witness STRUSS, cross-examined by the Defense during the session of 9 October 1947 (English Record page 1926, German Record page 1915) stated that the IG had not the least technical influence on the Hasag and that it had no technical connection at all with the latter.

As regards WOLFF & Co., these statements of the witness STRUSS apply with at least the same force quite apart from the fact that this firm itself played no part at all in the connection here under discussion, since, as evidenced in detail by the above statements of the witness SCHIEDLER, the total output figures of the military powder and explosives production include no production figures of the firm of WOLFF & Co. The same goes for the relations of the DAG to the Hasag and to WOLFF & Co. (See deposition SCHIEDLER of 28 April 1948, English Record, page 12 766,

and page 12 774, German Record, page 13 017, and page 13 026).

Between the Sprongehemie and the Eibis on the one hand and the Wesag and TOLFF & Co. on the other, there exist the same relations as between the Vornort-Chemie and the DAG, that is to say, both firms are manufacturing companies and nothing else, operating as Reich trustees certain Reich-owned plants which had been put up at the order of the Reich. The statements which have been made under subsection 4) of this Closing Brief concerning the absence on the part of the DAG of any possibility of influencing the transactions of the Vornort-Chemie, can therefore be applied with equal force to the relationship Wesag-Sprongehemie and TOLFF & Co.-Eibis. The same applies regarding the obligations to secrecy and the resulting impossibility to report to third parties outside in such a way as to convey to them an idea, however vague, of the type and extent of the transactions of these companies. As regards the membership in the Aufsichtsrat of TOLFF & Co. of the defendants SCHMITZ and GALTJESKI, it must be pointed out that, as already demonstrated by the example of the DAG and the Vornort-Chemie, Aufsichtsrat members of the parent company must be regarded as third parties outside as well, because the obligation to secrecy was equally binding in dealing with them.

In conclusion, reference is made to the following points:

As the witness SCHIEDLER stated under cross-examination on 28 April 1948, (English Record, page 12 766, German Record, page 13 017), there existed in Germany before the war no private individual or institution possessing complete knowledge of the constructional activities of the firms DAG, Wesag, TOLFF & Co. and Vornort-Chemie, Sprongehemie, Eibis or

of their production figures. Still less would such a private individual or institution, as for instance the H. Vorstand, have been in a position to exercise over the slightest influence on these developments. The entire activity was directed by the Army Ordnance Office, which alone was in a position to survey completely the constructional activity and the production figures in the field of powder and explosives, to the secrecy of which great value was attached also in dealing with the firms which participated in this program. In this connection it is significant that even a witness like Dr. SCHMIDT, as member of the D.A.G. Vorstand, according to his statements, (English Record, page 13 123, German Record, page 13 327) had no knowledge worth mentioning of the goings-on in the Usag. Under these circumstances it is self-explanatory if the Prosecution, cross-examining the witness SCHMIDT, (English Record, pages 13 123 - 26, German Record, page 13 327 and following pages, in particular page 13 329/30,) made the attempt to represent the fact that Dr. SCHMIDT, in a conversation with I.G. lawyers on the Montan system, casually mentioned that just as the DAG worked with the Vorwerk-Chemie according to the Montan system, so did the Usag with the Sprengchemie, as a

"discussion of the activity of the Usag and the German Sprengchemie with members of the I.G."

It is natural if thereupon the witness replied indignantly that:

"If during that discussion, I mentioned the fact that the Usag too had such a system that does not mean, of course, that I discussed the Usag and its subsidiary firms with gentlemen of the I.G."

8. Even complete knowledge of the production situation in the sphere of gun powder and explosives did not allow of any conclusions as to aggressive plans on the part of the Government, since the state of armament in this sphere was in effect inadequate for waging a modern war.

To stress it once more: according to the foregoing elaborations the defendants had no knowledge of the conditions in the sphere of gun powder and explosives (as dealt with in subsection 6 of this closing brief) nor of the extent of the activity of the D.A.G. and of the total production figures concerning military explosives and gun powder. But even if they had had such knowledge it would have been equally unlikely to cause them to deduce aggressive intentions on the part of Germany's political leaders. For, the witnesses SCHIMMELT and SCHWUR in their affidavits have described what the development of the German armament in regard to explosives and powder looked like especially to an expert familiar with this branch.

(See affidavit Heinrich SCHIMMELT D.A.G. Doc. 10, Defense Exh. 10, in D.A.G. Doc. Book I, p. 39 and affidavit Dr. SCHWUR D.A.G. Doc. Book 14, Defense Exh. 14, in D.A.G. Doc. Book I, p. 69).

These witnesses refer to a series of circumstances which indisputably refute the assertion of the Prosecution to the effect that the armament in this sphere of gun powder and explosives could appear to the participating industry as a preparation

of an aggressive war.

From the affidavits it is evident that:

- a) the state of armament in this branch was utterly inadequate for waging a modern war, and
- b) the events in the plants before the war, and especially shortly before the outbreak of the war, did not indicate in any way an impending start of hostilities.

Let me refer only to the following, particularly significant points.

- 1) The main weight of the activity of the DIG in connection with the Reich Plants (Monten plants), which it had built, definitely was in the war period itself. Until the beginning of the war, the pertinent expenses only amounted to 12 % whereas the war period consumed the remaining 88 % of the total costs spent within the scope of this building activity. It must still be considered that the 12 % also included the expenses for the reconstruction of a plant blown up in an explosion, a plant which was permitted to produce military explosives under the Treaty of Versailles.

The iron allocation and the supply of labor for new constructions in this sphere of gun powder and explosives were completely insufficient before the war. This factor impeded the new construction especially during the period before the outbreak of the war.

At the outbreak of war nobody could say that the planning in this sphere had been completed. The technical armament in this sphere of gun powder and explosives was, on the contrary, in a totally inadequate state.

For instance, the productive capacity of Trinitrotoluol, which was by no means fully utilized, amounted to approximately 6000 tons per month in the whole of Germany. During the war it was increased to between 20 and 22000 tons per month, and, even so equalled only about 20 % of the capacity of the U.S.

At the beginning of the war, conditions in some other spheres were considerably worse even than with Trinitrotoluol; for instance, there existed at that time neither production capacities worth mentioning for the modern and decisively important chemicals Hexogen and Nitroguanidin nor any but negligible supplies.

(See affidavit Dr. SCHUMER D.L.G. Doc. 14, defense exhibit 14, in D.L.G. Doc. Book I, page 69).

As regards the processing of explosives and their filling into ammunition the preparations also were extremely inadequate. At the beginning of the war it was found that there were far too few ammunition filling establishments, so that a whole number of inadequate work-shifts had to be planned and set up in a hurry.

(See affidavit Heinrich SCHUMPER D.L.G. Doc. 15, defense exhibit 15, in D.L.G. Doc. Book I, page 43).

The orders, which the competent office (Heereswaffenamt) issued in connection with the construction of the further expansion of Reich owned factories, were termed "preliminary orders" (Vorbestellung).

Of all the preliminary orders given to the DVG the following were carried out:

- 112 - 29,3 % before the 1 September 1939,
- 33 - 21,6 % from 1 September until 31 December 1939,
- 188 - 49,1 % from 1 January 1940 until the end of the war.

a) b) During the time preceding the war the available and in themselves already insufficient capacities were not fully utilized. In order to utilize the plants to the fullest extent had not been given not to speak of enforcing production. Thus of the entire production of the various plants of the Verwert-chemie from the beginning of 1937 until the end of the war merely an infinitely small part, namely 3,4 % was produced during the time before the outbreak of the war, whereas 96,6 % of the entire production were carried out during the war.

Even at the beginning of 1939 sweeping changes in the production-process for Trinitrotoluol were carried out for the purpose of producing an especially high-class product which could be stored for decades. If a war was imminent this measure was superfluous, since such a long storage-capacity was then not necessary. Moreover, it was harmful since in the course of the change production was sometimes temporarily stopped and also in the long run the production capacity of the plants with regard to the new process remained at a low level and the exploitation of raw material not as good.

Until the outbreak of the war the entire production (bombs and grenades) was filled with pure Trinitrotoluol, a process which was sensible only, if

it was intended to store the ammunition for decades. Otherwise the ammunition would have had to be filled with a mixture of 60 Tri/40 Ammoniumnitrate, since such a filling with absolute by sufficient explosive capacity means an increased production of nearly 70% whilst at the same time the cost decreases considerably. (Ammoniumnitrate costs only a fraction of the price for Trinitrotoluol).

If the Affiant Dr. ZEIDELHACK in the document WI-9193, Pros. Exh. 693, volume 32, p. 101, Engl. p. 105 claims to the contrary, that the Reich-installations which were established by the IG and its affiliated companies during pre-war time were twice as many as needed in peacetime, then this statement is already completely worthless for the reason that the capacity of the installations is not mentioned at all in the affidavit. The witness SCHINDLER is quite right when he points out in his affidavit of 2 December 1947 (DAG Dec. 11, Def. Exh. 11 in the DAG Dec. Book I, p. 50) that a certain capacity can be reached with one as well as with several factories, wherefore the number of the plants on the basis of which Dr. ZEIDELHACK makes his assertion, does not give a clue to the height of the capacity. The witness SCHINDLER further points out that the conception of the peacetime needs of an army, which Dr. ZEIDELHACK used as basis for his argument is theoretical and in itself contradictory, since - apart from small quantities for manoeuvres and firing practices - a need for ammunition in peacetime does not exist at all. Moreover, as further pointed out by the witness SCHINDLER, new capacities were only established insofar as they were

demanded and ordered by the Army Ordnance Office, whereby the industry did not have any insight - whatever in how far those capacities were needed.

So much with regard to most obvious circumstances in the production field of military explosives and gun powder, which obviously refute the assertion of the Prosecution that those who had an insight in this field had some inkling of a future aggressive war. The generally insufficient standard of armament in Germany has been proved unequivocally by the statements of prominent experts like Dr. EHMANN on 15 January 1948, Engl. p. 5356, German p. 5384, Dr. ZIMM on 14 April 1948, Engl. p. 11 438/39, German p. 11 625/26, General HUEHNEMANN on 5 May 1948, Engl. p. 13 490 ff., German p. 13 791 ff., as well as by the statement of the witness MILCH Engl. p. 5329, German p. 5355.

9. For legal and factual reasons there would have been no possibility for the I.G. and in particular for the defendants SCHMIDT and KAPPAS to interfere with the activities of the D.G. and, still less so, of the Verwert-Gesellschaft in the field of armaments.

Finally, we might in this connection discuss once more the question of what possibilities the Defendants would have had at all to prevent the participation of the D.G. in the German rearmament before and during the war, provided this activity of the D.G. had been known to them and given them any reason for misgivings, neither of which, as already stated, was the case.

The integration into the rearmament process of the D.G. in the field of military explosives and powders was brought about - apart from their insignificant own and government-scheduled production - by the OKW ordering the D.G., as trustee of the Reich, to erect plants for the production of military explosives and powders which, on completion, were transferred to the Reich or rather to the so-called Montan-Gesellschaft which had been called into existence by the Reich for that purpose. The Montan-Gesellschaft generally leased these plants to the Verwert-Gesellschaft, and the latter subsequently operated them. In this respect it must be emphasized that not only did the I.G. show no initiative at all in this connection, but moreover that both the construction of the plants, their operation and each single contract was due to orders from the appropriate military agencies. As these contracts were in the nature of a production schedule, that is to say a government decree,

the D.A.G. would not have been in position, considering the stated ruling in Germany, to ignore such a decree. (In this connection see the comments in Closing Brief Professor EHLIS, deposit on X-157L, English record page 5419 and following pages, German record 5759 and following pages, judgment of the Military Tribunal No. IV record in case V, English page 10 999/94, German page 10 736.)

As regards the question of the government-controlled economy and the state of emergency with all its consequences resulting therefrom for every German enterprise, reference is herewith made to the exhaustive evidence in the Document Books I - III "Economic Control" I - III, furthermore to the relative comments in the Closing Brief for Dr. EHLIS and finally to the deposition Dr. VISS English record pages 14264 - 14265, German pages 14 612 - 14 624 and the above quoted sections.

In the case under survey, however, this problem has a particular aspect in that the D.A.G. was an independent enterprise with its own Vorstand which - whatever the internal relations between U.S. and D.A.G. may have been - bore the sole transactional responsibility in dealing with third parties and in particular also with the government agencies, and was, therefore, solely responsible for the fulfillment of the government production schedules set for them.

As shown by numerous depositions of witnesses both for the Prosecution and the Defense, the leading personality who was in particular in control of the technical development of the D.A.G. combine was their General Manager Dr. Paul SCHUBERT.

In view of the above outlined conditions it was he alone, if anybody, who had the theoretical possibility of restricting the measures imposed upon the D.A.G. by the O.H. in the field of explosives and powder within the rearmament program.

There was no doubt that no such possibility existed for the members of the I.G.-Vorstand, in particular the defendants SCHMIDT and GALTHER, complete outsiders as they were in this connection, if only because the O.H. addressed its orders to, and made the respective arrangements with, the D.A.G., whereas it was not even permitted to notify the Vorstand of the I.G. of such orders and arrangements. (See Document XI-7721, Prosecution Exhibit 559, Book 34 English page 1, German page 1 under article 14, Affidavit SIMONSON, Document No. 9, Defense Exhibit 9 in D.A.G. Doc. Book I, page 54; Deposition Dr. TH. KERN, English Record page 7120, German Record page 7179.)

In this connection no importance at all attaches to the fact that the defendants SCHMIDT and GALTHER, in their capacity as members of the Aufsichtsrat of the D.A.G., were supposed to exercise a certain - though since the promulgation of the new stock companies law of 1938 considerably restricted - supervisory function towards the D.A.G., because this supervisory function, according to the legal rights pertaining to the Aufsichtsrat, only regarded the regularity of commercial business transactions of the D.A.G. The very fact that the required funds were supplied almost exclusively by the Reich was the reason why financial considerations which might have afforded an excuse for meddling in large part of the production schedules set by the O.H. played no part at all in this sector of the rearmament program.

Since, therefore, there were no objections of a financial or commercial nature it need not be explained in detail that the Aufsichtsrat allegedly had no way to prevent the Vorstand of the D.G. from carrying out the production schedules of the D.G. or to take exception to the business transactions connected therewith. In this connection we may refer once more to the fact that out of an average of 20 Aufsichtsrat members, 2 to 3 at the most were at the same time representatives of the I.G., who therefore would never have been able to bring about a respective resolution of the Aufsichtsrat.

To an even larger extent this applies to the Verwert-Gesellschaft in which the present business of the D.G. consists, both in regard to the erection of new plants and the production of military explosives and powder, was concentrated. There, each order came to the smallest firm looked at with instructions and at least expenses. Moreover, none of the defendants had any relations with the Verwert-Gesellschaft beyond any an Aufsichtsrat appointment, nor was the prosecution offered the least proof in this respect.

When rearmament started, at a time when this development still moved along an internationally recognized line (see London Naval Agreement, etc.) the respective government measures were less far-reaching. But according to what the witness SCHINDLER stated in his affidavits of 1 December 1947 and 19 December 1947, that the actual business, in particular in the field of explosives and powder, was quite small at that period. (See D.I.G. Document 10, Defense Exh. 10, and D.I.G. Document 19, Defense Exh. 19, both in D.I.G. Doc. Book I pages 39 and 59.)

As time went on, in particular after the outbreak of war, practically the last vestige of free transactional decision, above all in questions concerning armament production, had vanished, and it need not be told at great length that a refusal to carry out OKW production schedules - the compulsory nature of which was beyond any doubt - would certainly have resulted, under the existing legal provisions, in long prison terms, if not in detention in a KZ or even in death sentences for sabotage and undermining of the war potential. (In this connection see the exhaustive comments in the Munich Brief Professor VALL and his cler, furthermore the statements in the judgment of the military Tribunal No. IV, Record Case V, English page 10 999/94, German page 10 738, and the depositions of the witnesses VIKI and WISSE quoted on page 62, as well as the depositions of the witness LITKEIS, English Record page 5656, German Record page 5694/5.)

10. The Prosecution's charge that the I.G.-Konzern had consciously aimed at a weakening of the war potential of Germany's prospective foes is without any foundation as far as the powder and explosives fields are concerned.

In connection with its expositions regarding the alleged cooperation of the I.G. in the preparation of aggressive war, the Prosecution has charged, among other things, that the I.G., by the conclusion of cartel agreements, had consciously weakened the military potential of those countries by imposing certain obligations on them. The Prosecution submitted in this connection the documents NI-10969, Pros.Exh.1011, NI-10970, Pros.Exh.1012 as well as the documents NI-10963, Pros.Exh.1013 and NI-10964, Pros.Exh.1014, arguing that, by reason of the agreements contained in the two first-named documents, the American firm of Rockington Arms had not been in a position during the war to supply Britain with tetracone ammunition, which is of utmost importance for the Prosecution of war. Already the fact that the agreements in question were concluded in the years 1929 to 1931 should be considered sufficient proof to make clear that the charge put forward by the Prosecution is not justified in this case. Over and above that, the witness von HERZ, who as coinventor of tetracone ammunition took a decisive part in the respective negotiations with Rockington, ICI and Canadian Industries Limited, in a detailed affidavit (DAG-Doc.17, Defense Exh.17, DAG-Doc.Book II, p.1) has corrected the erroneous conclusions

drawn by the Prosecution from the contracts submitted by it.
It will do to quote here the concluding remark of the witness:

"It may be seen from the above that Romington was
excluded from the markets of the British Empire in
regard to military tetrazene ammunition at the request
of the ICI, and DaG complied with this request."

(For the complete agreements covering this field see specifically
the DaG-documents and/or Defense Exhibit No.16,19,20 and 21,
DaG-Dec.Dock II, pp.5,23,33 and 47).

For the rest, the Prosecution did not make even the slightest
attempt to show that any of the defendants had anything to do
with the conclusion of these agreements or even knew of them.

The fact that there can be no question of any intention on the
part of the DaG of weakening the war potential of Germany's
expected enemies, is clearly proven by the affidavit of the
witness von HERZ regarding the so-called explosive-rivets-
process (DaG-Dec. and Defense Exh.23, respectively). It con-
cerned the turning over to an American company of a method for
the manufacture of explosive rivets which had been developed
by the HEINKEL-Flugzeugwerke and the DaG. In summing up, the
witness states:

"Everything was therefore done by both the Heinkel-
Flugzeugwerke and the DaG in order to make possible
in the USA, even after the war had broken out in Europe,
the manufacture and utilization of these explosive rivets
which,

'especially in war time, were of the greatest importance to the German Airforce.'

It can finally be seen from the affidavit of Franz Anton GIERLICH, dated 3 December 1947 (DaG-Doc. and Defense Exh. No.22, Doc.Book DaG II, p.54), that the DaG and/or the Kooln-Rottweil A.G., which belonged to the Konzern and which handled the whole DaG export business in military explosives, made substantial deliveries to countries which were Germany's opponents during the war even in the last years before the outbreak of World War II.

These testimonies of the witnesses von HERZ and GIERLICH do not only clarify the DaG's attitude in regard to the alleged intention of weakening the war potential of supposed enemy countries of Germany, but also supply a further important indication as to the non-existence on the part of the DaG of any suspicion of a planned aggressive war, and that there was all the less reason for them to entertain such a suspicion as the business transactions described by the witnesses required the approval of the authorities, which was also granted.

Permit me to sum up once more, in a concise form, the expositions of this Closing Brief:

In the opinion of the Defense, the detailed evidence has furnished the proof that the defendants, and particularly SCHMITZ and GAJEWSKI, did not exert the least influence on the business activities of the DaG and the Vorwerk-Chemie, as far as the field of production of military

explosives and powder is concerned, and that they did not have any knowledge of the happenings in this field of work either, which would have enabled them to get an approximate insight into its extent. Permit me to add that the situation regarding the firms of WOLFF & Co. and Waseg, as well as that of the latter's daughter companies Eibia and Strongchomio, was exactly the same. The Prosecution has not succeeded in furnishing proof to the contrary. Accordingly, it has not been established that the defendants can be charged with ~~criminal~~ neglect or participation ^{approval} by tacit/in connection with Count 1, insofar as armament measures in the powder and explosives fields are concerned. The Defense wants to emphasize once more in this connection that it holds that the whole argumentation of the Prosecution with regard to Count 1 is irrelevant. It felt, however, obliged to go into that matter in the same elaborate manner, although this, in its opinion, in consideration of the reasons specified in the motion of 17 December 1947, would not have been necessary from the purely legal point of view. Explicit reference is made in this respect to the content of that motion and the respective plea of Dr. von ~~WEITZER~~.

Wormberg, 2 June 1948

signed: Hanne GIEMLICH

signed: Carl WEYER

CERTIFICATE OF TRANSLATION

18-June 1948

We hereby certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the document: D.A.G.

Joel GETREU, ETO 45 672, Cover, pages 1-4, 46-48,
53-56, 64-66

.....

Hildegard L. FIRTEL, ETO 17 415, pages 5-7, 31-33,
40-42

.....

Gerhard FISCHER, ETO 17 397, pages 8-11, 43-45

.....

Paul E. GRONT, AGO B-397 975, pages 12-18, 25-27

.....

Hanna Marie, NICHTENHAUSER, AGO D-397 989, pages 19-20a,
37-39

.....

Hanna NICHTENHAUSER, ETO 20 113, pages 19-20a,
28-30, 34-36, 61-63

.....

Margd OBERLAENDER, ETO 20 192, pages 21-24, 49-52,
57-60, 67-75

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Defense Brief on Degesch

(English)

NATIONAL ARCHIVES MICROFILM PUBLICATIONS

Closing Brief, Decatur
(Encl. 11)

Case 6
Defense

MILITARY TRIBUNAL VI

CASE 6

CLOSING BRIEF

DEGESCH

for the Entire Defense
submitted by
Dr. Erich BERNDT
Attorney-at-Law

Young

CLOSING BRIEF LEGESCH

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The indictment states under sub-section 131 that poison gasses manufactured by the I.G. Farben and delivered to officials of the SS were used for the extermination of enslaved people in concentration camps all over Europe. The prosecution did not produce any evidence for its monstrous statement in its original form. In its case in chief, poison-gases were substituted by the insecticide Zyklon; two firms with which the I.G. Farben had no connections whatsoever (Lessner Werke and Kellin Werke, Kellin) took the place of I.G. Farben, and the place of the I.G. Farben as a supplier of this product to the SS was taken by the LEGESCH or rather its subsidiary companies Testa and Hall, the I.G. Farben's participation in the LEGESCH amounted to only 42.5% and its had no direct contacts at all with the subsidiary companies Testa and Hall.

The prosecution seeks to prove that the members of the Vorstand of the I.G. Farben, especially the defendants MANN, HOERLEIN, WUNSTER and BRUEGGEMANN are co-responsible for the mis use of Zyklon B. It states that the mass-killings of concentration camps inmates were carried out with Zyklon B by the SS which the latter had received from the Deutsche Gesellschaft fuer Schoedlingsbekampfung (LEGESCH). This company was supposed to have supplied Zyklon fully aware of the purpose for which it was to be used. The defendants are alleged to be responsible for this because the I.G. Farben had a predominant participation in LEGESCH and the mis use to

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which Zyklon was put must have been known to them - at least they must have had some such suspicion.

CONNECTIONS OF THE I.G. FARBEN WITH THE ZYKLON
BUSINESS.

Zyklon B was manufactured on order and for the account of Degussa by two independent firms in Dessau and Kolin, which had no connection whatsoever with the I.G. Farben, and was marketed by the DEGESCH, assisted by the firms HERRET & LINGLER and TESCH & STUBENOW.

(Examination and Transcript E.p. 5000,5009
" " " G.p. 5023,5031
" " " E.p. 10466,10467
" " " G.p. 10602/3)

DEGESCH is G.m.b.H. (Ltd.) in which the Deutsche Gold- und Silberscheideanstalt, formerly ROESSLER (Degussa), the I.G. Farbenindustrie A.G., and the TH-GOLDSCHMIDT A.G. have an interest.

The I.G. Farben participation in the DEGESCH consisted of 42.5% of the capital stock of that company; therefore, there exists purely formal connection of the I.G. Farben with the sales of Zyklon B because of the latter's financial participation in the DEGESCH. In addition to this, there was a so-called catalyst added to Zyklon B, which was manufactured at the Uerdingen plant of the I.G. Farben. These are the two facts which have provided the prosecution with an excuse for accusing the members of the Vorstand of the I.G. Farben of participation in the mass-murders at Auschwitz.

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- a) The Catalyst admixed to Zyklon was manufactured by I.G.

The I.G. Farben part in the manufacture of Zyklon B through its supply of the catalyst is so negligible that it seems absolutely absurd to base in this sole fact or in connection with the participation in LEGESCH, (see b) the charge of a participation in the Zyklon-murders of the SS. The value of the deliveries of the chemical, which was used as catalyst, varied in the years 1939 to 1944 between RM 9.00 and RM 6,400 per year. These quantities are only a minute part of the total sale of this chemical by the Verdinger plant (-1%-2,6%). They are also only a minute part of the finished product Zyklon. (0.1%-1%)

(Exh.LEGESCH 44,dcc.No.32 vol.LEGESCH II

p.51/52

" " 45, " " 31 " LEGESCH II

p.54/55

Examination HERNIT transcript E.p. 10 482

G.p. 10 619

" AMEND " E.p. 5 005

G.p. 5 028)

If one accuses I.G. Farben, as the supplier of the catalyst, of participation in the mis use which the SS made of Zyklon, one could, with equal justification, make a similar accusation against all firms which participated in the production of intermediate products for zyklon B, in supplying packing material or in its transportation.

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b) The I.G. Farben participation in the LEGESCH

The I.G. Farben participation in the LEGESCH was purely financial. The attempt made by the prosecution to prove that some of the members of the I.G. Farben-Vorstand took an active part in the LEGESCH business, going beyond financial interest, and that they had positive knowledge or at least a guilty lack of knowledge of the Zyklon-murders, has failed.

The evidence submitted by both the prosecution and the defense shows clearly in its entirety that the real participation of the I.G. Farben in the LEGESCH was far smaller than might have been thought, considering the size of its shareholding interest. The holdings of 42½ % of the capital stock were at no time accompanied by a 42½ % of the influence of the I.G. Farben on the management of the LEGESCH.

(Exh.LEGESCH No.28.doc.No.20 vol.LEG.II p-18)

The fact of participation of several partners in the LEGESCH, none of which held a majority of the shares, quite naturally brought about a far-reaching independence of action of the LEGESCH management. This fact which was also supported by the special kind of business done by the LEGESCH which demanded very special technical knowledge,

(examination MANN transo. E.p. 10466/67
G.p. 10602/3

" GOLDSCHMIDT transo.
E.p. 12875/76
G.p. 13078)

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was also expressly stressed by the witness PETERS during his examination.

(Examination PETERS transac. E.p. 10632
G.p. 10775
" SCHLOSSER " E.p. 10517
G.p. 10653)

cc) Only 3 of the 7 DEGESCH products were manufactured by I.T. Farben.

The prosecution tries to derive a strong preponderance of I.G. participations as compared with the other partners, in the DEGESCH from the fact that of altogether 8 products of the DEGESCH, seven were manufactured by the I.G. Farben, whereas only one, i.e. Zyklon B, was manufactured by another partner. This description is incorrect. There were only seven (not eight) DEGESCH-products,

(Exh. DEGESCH No. 53, doc. No. 67 vol. DEG. III p. 34
" " " 59 " " 68 " " " 50
" " " 16 " " 14 " " I " 62)

of which the most important, i.e. Zyklon, was manufactured by Degussa whereas the so-called T-gas was manufactured by the Th. GILSCHMIDT A.G.

(Exh. DEGESCH No. 32 doc. No. 56, DEG. III p. 29)

There were only three products which were solely I.G. manufacture of the DEGESCH, i.e. Colloid, Vantox and Tritox. Areginal, mentioned in the business report for 1943,

(Exh. DEGESCH No. 59, doc. No. 68, vol. DEG. III p. 50)
was not one of the DEGESCH-products,

(exh. DEGESCH No. 12 doc. No. 44 vol. DEG. I p. 34)
but was only tentatively used in 1944.

(exh. DEGESCH No. 59, doc. No. 68, vol. DEG. III p. 53)

(examination MEIN transac. E.p. 5003/4
G.p. 5026)

The number of DEGESCH-products made by the I.G. Farben did

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not, therefore, give it the stated predominant position. This failure to prove that I.G. Farben products of the DEGESCH were predominant, as compared with the products of the other partners is, however, a very interesting example for the way in which the prosecution draws conclusions contradicting each other from one and the same fact, if they seem to superficially fit into the structure of its argumentation. For instance, the prosecution points out in another connection that the Zyklon business was by far the most important one of the DEGESCH-sales, and that one must conclude from this fact that the I.G. Farben must have had a special interest in the Zyklon-sales. This conclusion of the prosecution is, as will be proved in another context, incorrect.

(see page 43)

However, the initial statement, i.e. that the Zyklon-sales made up the greater part of the total sales of the DEGESCH, is correct.

(examination AMEND transo. E.P. 5009, G.P. 5031

Exh. DEGESCH No. 56, doc. No. 65 G.B. LEG. III p. 1

" " " 58 " " 67 " " " p. 34

" " " 59 " " 68 " " " p. 50

Trans. Exh. 1773 doc. No. XI 9093, LB 82 E.S. 137, G.P. 186)

This relation between the financial proceeds from Zyklon-sales and the sale of all the other DEGESCH-products did not, however, develop until during the war; from the very start of the participation of the I.G. Farben in the DEGESCH the total sales proceeds of I.G. Farben products was smaller than the proceeds

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(Examination AMEND, Transcr. Engl. p. 5009, German p. 5031

Exh. DEGESCH No. 49, 50 Doc. No. 70, 71 (Charts)

"	"	"	56	"	"	65 Bk. III p. 1
"	"	"	57	"	"	66 " " " 18
"	"	"	58	"	"	67 " " " 34)

It is, therefore, a highly misleading way of introducing evidence if the prosecution brings up the number of I.G. products which were sold by the DEGESCH in order to demonstrate the preponderance and supremacy of I.G. interests in the DEGESCH as compared to the influence of the other shareholders. However, not the number of products which a shareholder brought to the DEGESCH is decisive, but their importance for the extent of the DEGESCH transactions, and thus also for the profit proceeds. In this respect it has been incontestably established, however, that the entire range of I.G. products, used by the DEGESCH, did not even remotely approach the importance of the Zyklon process developed by the Degussa.

5b) In spite of the I.G. being represented on the DEGESCH Executive Board (Verwaltungsausschuss) it did not have decisive influence on the business management.

As further substantiation of its claim that the I.G. enjoyed a predominant position in the DEGESCH, the prosecution asserts that of eleven Executive Board members of the DEGESCH five had been appointed from among the I.G. Vorstand, and that one of the I.G. representatives was the chairman of that board. This fact, too, is meant to make it appear that the I.G. played a predominant part within the DEGESCH. Nothing is more erroneous than

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this notion. Just as the Degussa, the I.G. was represented in the Executive Board by five representatives. Dr. HEERIT, whom the prosecution does not include amongst the Degussa representatives, in actual fact should be included as one of these representatives. (Examination of HEERIT, transcript English Page 10498, German Page 10634).

Ever since the death of Executive Board Member WEBER-LIBERLE in 1943, the I.G. had only four representatives on the Board and was thus a minority shareholder as far as the Degussa was concerned. Furthermore, in keeping with its designated duties, the Executive Board had nothing to do with operational matters of the DEGESCH, neither with regard to commercial nor to technical-engineering fields. As a body corporate and as an industrial enterprise within the cycle of industry, the DEGESCH was exclusively represented in accordance with its corporation statutes and pursuant to the Limited Company (G.M.B.H.) Law, that is, by its managers and Prokurists. However, these persons did not come from the I.G.

(Exhibit DEGESCH No.66, Document No.76, Book III, Page 65).

Neither the DEGESCH corporation statutes (Exhibit DEGESCH No.15, Document 43, Book I, Pages 44 to 46) nor the Limited Company (G.M.B.H.) Law have made provisions for the Executive Board as a corporation agency. Rather, its creation was brought about by a consortium agreement, dated 15 September 1936 and 17 March 1937, between the three DEGESCH partners, i.e. Degussa, I.G. and Th. GOLL-SCHMILT A.G.

(Exhibit DEGESCH No.14, Document No.6, Book DEGESCH I, Pages 39 to 43).

Section 3 of this agreement provides that, as far as the shareholders are concerned, the Executive Board

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has the same position as an Aufsichtsrat, and that this Executive Board represents the shareholders towards the business managers as a practical expression of their shareholders' rights. This fact means that the DEGESCH Executive Board is nothing but an agency with the sole purpose of enabling the shareholders to execute their shareholders' rights. Consequently, its members have only the rights and obligations of the shareholders represented by them. Therefore, supervisory obligations regarding the business management can be exercised only to such an extent as has been provided in Article 46 of the Limited Company (G.M.B.H.) Law which is incumbent upon shareholders. All Executive Board members have fully lived up to the above described duties by commissioning the "Allrevisio" (Allgemeine Revisions- und Verwaltungs A.G., Frankfurt on the Main), a long established and efficient auditing company, to exercise continuous control over the DEGESCH and all its transactions.

(Exhibit DEGESCH No. 23, 10, Document No. 50, 6 Book DEGESCH I, Pages 96, 27, Examination Dr. GOLDSCHMIDT, Transcript English Pages 12873/74, German Page 13077).

On the basis of these facts, the Executive Board cannot be characterized as a corporation agency of the DEGESCH as defined by the law. If it had been such a corporation agency, its position would have had to be included in the corporation statutes of the DEGESCH, which was not the case. Moreover, its organizers never conceived it as such an agency. (Examination MANN, Transcript English Pages 10470/71, German Page 10606).

This board is nothing else but a DEGESCH organization, outside the corporation statutes of the DEGESCH, and it was inaugurated by the DEGESCH shareholders for the purpose of

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uniformly co-ordinating shareholders' interests for external transactions.

(Exhibit DEGESCH No. 4, Doc.No.55, DEGESCH Book I,	pages 11/12
" " " 16, " " 54, " " Book I,	pages 48/49
" " " 32, " " 56, " " Book II,	pages 29/30
" " " 35, " " 37, " " Book II,	pages 39

Examination MAFN, Transcript English Page 10470,
German Page 10606).

Therefore, the LEGESCH shareholders only exercised their shareholders' rights through those officials whom they had nominated for the Executive Board, and at the same time they used this board as a co-ordinating agency, the functions of which, incidentally, were not limited to LEGESCH matters but consisted even to a far greater extent in arranging talks between the firms concerned for discussion of generally important problems. (Examination MANN, Transcript English Page 10471, German page 10607). That this latter function was the actual purpose of having the Executive Board can be seen from the fact that the firms concerned had delegated their executive officials to the Executive Board of the small and unimportant LEGESCH. (Examination GOLDSCHMIDT, Transcript English pages 12073/74, German page 13077). Furthermore, this fact is also substantiated by a document written at that time, the memorandum of the defendant WUNSTER, dated 20 June 1940, which states:

"The selection of leading personnel of the Schoedeanstalt and I.G. was made less because of DEGESCH, but rather because this committee is suitable for discussion of the current basic problems of both firms during the conferences."

(Exhibit WURSTER No.220, Doc.W. 548, Document Book WURSTER IV, Pages 4 to 5).

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This only possible interpretation of the legal and actual position of the Executive Board completely refutes the claims, made by the prosecution, that by being on this board and having a leading position on it this fact could be held against the defendant MANN. In itself, the Executive Board neither had any jurisdictional, legal nor actual influence upon business operations. The DEGESCH management was its sole and exclusive representation which determined transactions and operations, without being in any way hampered in the execution of those specific duties by the Executive Board.

The manner in which the Executive Board functioned during a period of fourteen years confirms this opinion as to its legal and actual position. It is an established fact that the Executive Board at no time exercised any influence upon the DEGESCH management.

(Exhibit DEGESCH No. 30, Doc. No. 33, DEGESCH Book II, P. 23)
(" " " 33, " " 37, " " " 39)
(Examination PETERS, Transc. Eng. P. 10632, Germ. P. 10776).

This does not only apply to current routine operations but also to such transactions which went beyond this sphere of business. Although such important decisions, as for example the expansion of the DEGESCH activities by incorporating the new field of the so-called chamber gassings and the introduction of a totally novel decontamination process (Exhibit DEGESCH No. 18, Doc. No. 14, DEGESCH Book I, Page 64), fall into the period of the Executive Boards' existence (Exhibit DEGESCH No. 18, Doc. No. 14, DEGESCH Book No. I, Page 64), the Executive Board had no part in bringing about these decisions.

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(Examination Mr. PETERS, Transcript English Page 10540, German Page 10679, Examination SCHLOSSER, Transcript English Page 10512, German Page 10648).

These decisions were solely and independently made by the DEGESCH management, and the Executive Board was not even given prior notice of them. At best, the Executive Board members did not learn about them until they had been effected, and they derived such information from the annual business reports; partly however, they were not informed at all, simply because the Executive Board had nothing to do with any transactional matters. For example, the business management did not deem it necessary to even inform Executive Board members, in their annual business report for 1942, of the basic points concerning the discontinuation of DEGESCH participations in the Testa in 1942, and the agreements between the DEGESCH and the Testa which were concluded in connection with this discontinuation move. (Prosecution Exhibit 1773, Doc. NI 9093, Book 82, English page 131, German page 186). This fact is particularly worthy of notice as the above mentioned transaction was a re-organization of relations between the DEGESCH and Testa and thus constituted an extremely far reaching decision.

(Examination HERBERT, Transc. Engl. p. 10489, Germ. p. 10626)
(" " PETERS " " 10540, " " 10679).

The only important DEGESCH decision for which the Executive Boards' approval had been requested beforehand was the acquisition of a company-owned office building in 1941.

(Testimony PETERS, Transcript Engl. p. 10549, Germ. p. 10679)
(" SCHLOSSER " " 10633, " " 10776)
(" " " " 10512 " " 10648).

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The fact that of eleven Executive Board members five had been delegated by the I.G., by no means had the importance which the prosecution wants to give it. It does not signify that the I.G. had a decisive influence in the DEGESCH.

cc) The Degussa was the management partner of the DEGESCH.

The actual I.G. influence did not even correspond to the proportion of their minority participation in the DEGESCH, which was 42½ per cent. The number of their representatives on the Executive Board is quite insignificant in view of the predominance which another shareholder, i.e. the Degussa, held based on the latter company's historical relations with the DEGESCH and because of its agreement with the I.G.; thus the Degussa claimed such a supremacy and actually did hold a predominant position.

(Exhibit DEGESCH No.26, Loc.No.20, DEGESCH Book II, p.18).

Up to 1930, the DEGESCH was nothing else but merely a subsidiary company of the Degussa which owned all original stock of the DEGESCH. (Exhibit DEGESCH No.3, Loc.3, DEGESCH Book I, pages 4 to 10, Exhibit DEGESCH No.30, Loc.No.33, DEGESCH Book II, page 22).

The participation of the I.G. and the Th. GOLDSCHMIDT A.G. in the DEGESCH came about by the fact that, both the I.G. as well as the Th. GOLDSCHMIDT A.G., had developed gaseous decontamination preparations which made it necessary that a distribution organization of one and the same type be included, an organization which the Degussa had created over a period of many years calling for arduous work both at home and abroad, and which within the DEGESCH was in charge of Zyklon B Sales.

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(Examination MANN, Transc. Engl. p. 10466, Germ. p. 10602
" GOLLSCHMIDT " " " 12874/75 " " 13078).

Both enterprises, therefore, participated in the DEGESCH by introducing their processes; thus, the DEGESCH became a joint company of the Degussa, the I.G. and Th. GOLLSCHMIDT A.G., in which the two first mentioned partners had a participation of 42 1/2 per cent each in the original stock, and the Th. GOLLSCHMIDT A.G. a participation of 15 percent.

(Exhibit DEGESCH No. 5, Doc. No. 70, DEGESCH Book I, p. 14
" " " 6, " " 7b, " " I, " 18
" " " 14, " " 6, " " I, " 39).

However, although these two new shareholders came in, this did not change the relations of the DEGESCH to Degussa. The DEGESCH retained its offices in the Degussa office building, and, as before, its bookkeeping was handled by the Degussa bookkeeping department; also, its employees, all of whom came from the Degussa, were paid the same rates as Degussa employees.

(Exhibit DEGESCH No. 10, Doc. No. 8, DEGESCH Book I, Page 27
" " " 30, " " 33, " " II, " 22)
(Examination SCHLOSSER, Transc. Engl. p. 10516, Germ. p. 10652
" MANN " " " 10467, " " 10603).

In other fields too, the two new DEGESCH shareholders respected the fact that they had joined an enterprise the development of which was exclusively a merit of the Degussa. In a letter of the Degussa, dated 10 February 1930, and addressed to the I.G. the former states:

"When conducting the negotiations we agreed jointly that, by your participation in the DEGESCH management, this fact in itself would not entail any changes."

(Exhibit DEGESCH No. 3, Doc. 3, DEGESCH Book I, page 7).

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That means that also in the future, the DEGESCH management was to be nominated by the Degussa, which latter company also retained supervision and control.

(Exhibit DEGESCH No. 33, Doc. No. 27, DEGESCH Book II, page 33/34)

(Examination MANN, Transc. Engl. pages 10467/68, Ger. pages 10603/04).

This relationship of the Degussa to the DEGESCH management did not change in any way during the 14 years the I.G. had its participation in the DEGESCH. Not one actually officiating business manager, acting business manager, or Prokurist of the DEGESCH came from the I.G. during the whole of that period, but all such officials came from the Degussa.

(Exhibit DEGESCH No. 30, Doc. No. 33, DEGESCH Book II, p. 22
" " " 66, " " 76, " " III, p. 65).

The I.G. always respected this historically justified predominance of the Degussa within the DEGESCH.

(Examination MANN, Transcript Engl. pages 10469/70, German pages 10605).

It is true, the Degussa on its part always saw to it that the remaining shareholders did not interfere with its special privileges as "managing shareholder company".

For example, in 1936 the Degussa very emphatically asserted its special privileges towards Dr. GOLDSCHMIDT, the representative of Th. GOLDSCHMIDT A.G. in the DEGESCH. In a report, dated 30 March 1936, submitted by the DEGESCH manager at that time

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(Exhibit DEGESCH 13, Doc. No. 47, DEGESCH Book I, p. 37)

it was stated:

"This plan was repudiated by Herr SCHLOSSER, representing the Scheideanstalt, and the undersigned, representing business management of the DEGESCH, and was stated that the figures and other data would, needless to say, be available to the firm members jointly at any time, but not to representatives of a single firm member; and that apart from this the Scheideanstalt, as the business-managing firm partner, and the business management of the DEGESCH itself refused all discussions on this point."

In this respect, it was not a case of establishing majority rights for a minority participation, but the latter involved was ~~the~~ the Degussa asserted its justified claim on a predominant position within the DEGESCH. Dr. GOLD-SCHMIDT recognized this claim as justifiable.

(Examination GOLDSCHMIDT, Transl. Engl. p. 12679, Germ. p. 13081)

Another case in which the Degussa banked on its predominant position as managing shareholder corporation-- this time towards the I.G.-- was testified to by the witness Joseph SCHMITZ, the official in charge of department F in the Sales Combine Pharmazeutika, which he deposed in his affidavit of 19 February 1948.

(Exhibit DEGESCH No. 33, Doc. No. 27, DEGESCH Book II, p. 33), which states amongst other things:

"The reason was that the DEGESCH partners, Degussa (Herr SCHLOSSER) and I.G. Farben (Herr MANN), had an agreement that Degussa should represent also I.G.'s participation in DEGESCH, act as direct adviser, as well as control and manage the I.G. part of DEGESCH. On the other hand, the I.G. Farben Sales Combine BAYER had to control and manage the Chemiewerke Homburg a.G., Frankfurt/Main, whose majority stock was held by Degussa and I.G. Farben. Herr STIEGE, then manager of the DEGESCH, had specifically pointed out this agreement between Degussa and I.G. Farben regarding DEGESCH, when I visited the latter, I believe in 1935-I do not remember the exact time.

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There was a natural agreement that Mann was neither to receive a remuneration as manager nor to act as such, the latter even being prohibited. His appointment as manager came about only due to the fact that in 1930 when I. G. required a participation in the Degesch, Schlosser, a member of the Vorstand of the Degussa, was manager of the Degesch and requested the appointment of a member of the Vorstand of the I. G. Farben as manager in order to comply with the formality of equitable representation.

(Examination Schlosser Transcr. English p. 10511, G.10647)

" Mann " " "10468/69 3.10604/5

Mann, a member of the Vorstand of the I. G. Farben, was chosen since he was in charge of the Sales Organization Bayer which handled the Insecticides Department.

The importance and manner in which Mann conducted these managerial affairs is clearly evident from a note by Manager Sties of the Degesch, dated 14 April 1934 which in part reads as follows.

"In conclusion Director Mann gave expression to his gratification about the successful work and he in particular the fact stressed that it was not lack of interest that he in his capacity of Honorary Manager was following the management of the Degesch only along broad lines, but that according to his conviction it was best handled by the full-time managers."

(Exhibit Degesch No. 11, Document No. 46, Vol. Deg. I page 31)

Similar to his position as honorary manager of the Degesch, the defendant Mann did not actually participate in the management of the Degesch when he became Chairman of the Executive Board in 1940. (Exhibit Degesch No. 18 Document No. 14, Vol. Degesch 1, page 55.)

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The position of the Executive Board which has been described and illustrated by unequivocal evidence confined its chairman as well as the other members of this committee only to a formal participation in the matters of the Degesch. Since in practice it did not exercise any influence on the management due to the actual distribution of authority within the Degesch its chairman was not able either to exert any active influence on details or on the company policy of the Degesch management. The circumstances under which the appointment of the defendant Mann as chairman of the Executive Board took place even underlined the purely formal character of this position. The Chemiewerk Homburg A.G. was also jointly owned by the Degussa and I. G. Farben, but here conditions were vice versa. I. G. was in charge of the management while the Degussa was confined to financial participation. The Degussa only provided the chairman of the Aufsichtsrat in order to comply with the formality of equitable distribution of positions. The appointment of the defendant Mann as chairman of the Executive Board was only due to the desire to create in the Degesch where the Degussa was in charge of the management, a corresponding condition of equitable distribution.

(Exh. Degesch No. 17 Doc. No. 13 Vol. Deg. I P. 51

" " " 31 " " 34 " " II " 25

" " " 33 " " 27 " " II " 33

Examination Schlosser Trans. E. P. 10511 G. P. 10647

" " " " " " 10614 " " 10758

till 10759

till 10615 10604 till 10606

10668

till 10670

- c) The defendant Mann did not interfere with the management of the Degesch either in his capacity as chairman of the Executive Board or in any other capacity.

The prosecution attempts to prove that the defendant Mann, despite his purely formal position in the Executive Board, took an active interest in the Degesch and translated this into action by a continuous interference in its affairs. It is significant that the prosecution was able to introduce but a negligible number of documents in support of this allegation and that it had to go back as far as 1936 in order to lend more weight and force to its insignificant number of documents from a more recent period. The following documents were presented by the prosecution in the cross-examination of the defendant Mann.

Exh. 2099	NI 15056	Exh. 2100	NI 15052
" 2102	" 15180	" 2103	" 15053
" 2106	" 15057	" 2107	" 15051
" 2109	" 15060	" 2101	" 15033
" 2105	" 15034	" 2108	" 15055

There is not a single one among these documents which would show more than a formal participation in the affairs of the Degesch on the part of the defendant Mann. If one of these documents displays an interest on the part of the defendant Mann in the fumigation of a ship

(Exh. 2108 NI 15055)

this fact does not permit of any conclusion with regard to the influence which the defendant Mann exercised in the Degesch or as to his active interest in the company.

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The other documents concern correspondence referring to pure formalities such as stockholders meetings, Executive Board meetings, and similar routine matters and which therefore neither prove an active interest not to speak of any influence on the part of the defendant Mann on the management of the Degesch. The court took cognizance of this fact already in the case in chief and stated as follows:

"Just to load this record with a lot of documents to show that there were some business meetings that involved personnel or involved finances is of very doubtful value in view of the time that this is requiring."

(Trans. Eng. P. 10, 620 German P. 10,763.)

Even though this case in chief by the prosecution is not without value, this value however lies in quite a different direction from what the prosecution had in mind. It is a fact which speaks for itself that the prosecution was able to produce only a negligible number of documents covering the entire period of the association between the I. G. Farben and the Degesch, which did last 14 years, and that not a single one of these documents shows an active interference on the part of the defendant Mann in the affairs of the Degesch. This is the best confirmation of the defendant Mann's statement when he was cross-examined by the prosecutor, and I quote:

"... and during the five years from 1940 to 1945, apart from the business reports, I received perhaps altogether 2 or 3 letters. One concerns this matter of the building and what the other letter concerned I couldn't tell you."

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Probably some formality about the the balance sheet..."
(Cross-examination Mann Transcript English P.10,615,
German P. 10, 759).

This statement is effectively supplemented and confirmed
by the testimony of the manager of the Degesch, Dr. Peters,
which he gave to a question put to him in the direct exa-
mination:

"Q: What were the relations between yourself and Herr
Mann, the chairman of the Executive Board?

A: There were practically no relations. I saw him
only during the very rare meeting of the Execu-
tive Board in Frankfurt in which I participated,
and once toward the end of the war I went to see
him in Leverkusen."

(Examination Peters Transcript English P. 10529, German
P. 10668).

When the court stated that the documents introduced in
the two cross-examinations of the defendant Mann did not
prove anything beyond the uncontested fact of the formal
participation on the part of the defendant Mann in the
Degesch

(Transcript English P.10,621, German P.10,764)
the prosecution pointed to its difficult position in pre-
senting evidence which was brought about by the wilful
destruction of numerous documents which could have been
used as evidence.

(Transcript Eng. P. 10,621, German P.10,764).
In this connection it must be said that not a single doc-
ument which dealt with the relations between the Salis
Organization Boyer and the Degesch was destroyed in
Leverkusen

Exh. Degesch No. 71	Doc. No. 82	Vol. Deg. III	P 72
" " " 65	" " 75	" " "	" 63
" " " 74	" " 85	" " "	" 79)

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and that at the Degesch documents were destroyed merely through bomb damage and not deliberately. But also at the Degesch the more important documents remained intact since they were kept in the safe of the Degesch. They were found and confiscated there by the prosecution:

(Exhibit Degesch No. 68 Doc. No. 78, Vol. Degesch III
P. 69)

" " " 73 " " 84 " " III
P. 77).

Therefore the documents which were introduced by the prosecution thus do not represent a small remainder of the total files of which most were destroyed, but they contain, as far as the one side is concerned, that is Bayer-Leverkusen, everything without exception that ever was put down in writing with regard to the relations between the defendant Mann and the Degesch.

The position of the defendant Mann as well as of the remaining I.G. Farben representatives in the Executive Board of the Degesch was confined, as we see, to the formality of their being members of this Board. It thus follows that the I. G. Farben representatives in the Degesch had no active influence upon the Zyklon deliveries, especially not on those to the SS and the concentration camps either, nor were they able to exercise such an influence.

d.) Government Control of Zyklon sales during the war.

After the entire control over Zyklon sales went over to the Government Operational Commission for the Prevention of Epidemics, the possibility to exercise any influence was completely nil.

(Examination Reuscher Trans. Eng. P. 10558

Ger. P. 10689

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(Examination Goldschmidt Trans. Eng. P. 12894
Ger. P. 13096).

While the manager of the Degesch, Dr. Peters, was at the same time head of this commission, he was in this government capacity completely independent from the stockholders and members of the Executive Board of the Degesch.

- e) The members of the Executive Board were not obligated to check the details of Zyklon sales.

The kind of participation which the I. G. Farben had in the Degesch and which has been described, precluded any such active participation in the management. Therefore, the I. G. Farben representatives at no time even made the attempt to exercise any influence. There was no reason either since the time-proven relationship between Degesch and Degussa offered the guarantee for an unobjectionable management.

In addition, government regulations provided for police examination of the reliability of people working on Zyklon.

Examination Dr. Peters. Trans. Eng. P. 10529 German
P. 10667

" " Rauscher " " " 10558 German
P. 10698/99).

The Commission for Protection against Epidemics and for Decontamination of Areas, which was under the direction of Dr. Peters, had nothing to do with this security surveillance.

Exhibit Degesch No. 70 Doc. No. 81 Doc. III P. 73

Examination Rauscher, Trans. Eng. P. 10558 German P.
10698)

Therefore, none of the defendants had an idea or could have any idea that Zyklon B was used for criminal purposes.

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(Exhibit Degesch No. 16 Doc. No. 54, Vol. Deg. I, P.49

" " " 27 " " 23 " " II " 13

" " " 20 " " 28 " " II " 18).

In his cross-examination, the witness Goldschmidt characterized this situation very well when he said:

(Transcript English p. 12 875, German P. 13 078)

"Of course, Zyklon, that is prussic acid, is an extremely dangerous poison. For this reason the Degesch had to comply with very thorough safety regulations. But on the other hand, it had been used as an insecticide for decades. It was a proven agent and as far as I know it was never mis-used for criminal purposes.

The idea of a criminal mis-use was entirely outside of our imagination and experience. The situation is entirely similar to the sale of other poisons. Very strict regulations must be complied with. Yet these regulations cannot at all times forestall a mis-use "

Only if the suspicion of a criminal misuse of Zyklon had come up it would have been the duty of the accused members of the Executive Board to exercise in detail influence on the sale of Zyklon.

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B. The Defendants did not know of the misuse of Zyklon by the SS.

Through circumstantial evidence of a most versatile nature the Prosecution tries to explain that the defendants, and among these especially the members of the LEGESCH executive board (Verwaltungsausschuss) were familiar with the original misuse of Zyklon by the SS. This has not been proved. No sensible person can infer any knowledge of the defendants of the misuse of Zyklon by the SS in the Auschwitz concentration camp from the circumstances on which the Prosecution bases its case-in-chief. Neither collectively, nor if considered individually, does the circumstantial evidence collected by the Prosecution offer even the substantiated suspicion in this direction.

According to the opinion held by the Prosecution the knowledge of the defendants of the use of Zyklon for the performance of mass executions follows from the facts below:

- 1) Via the Tests the LEGESCH supplied "fantastic quantities" of Zyklon to the Auschwitz concentration camp, the LEGESCH knew the quantity of this delivery, since it received shipping notices of all Zyklon deliveries.
- 2) The LEGESCH supplied Zyklon to SS offices directly, although this had to take place exclusively via the medical supply depot of the army.

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- 3) In addition, the direct deliveries to the SS violated contractual agreements with the Testa which possessed the exclusive sales right for the territories East of the Elbe.
 - 4) The SS offices were supplied with non-irritant Zyklon by the LEGESCH.
 - a) The members of the Executive Board had no knowledge of the details of the business management.
-

Not one of these facts was known to the defendants. These facts involved were definitely details of the internal business management of the LEGESCH, of which a person whose interest in an enterprise is merely financial, is naturally not informed even if he is a member of a regular Aufsichtsrat.

(COLLSCHMITT examination Engl.Tr.p. 12696/97,
German Tr., 13100)

It never was the custom to inform the members of the Executive Board on such details of the LEGESCH business transactions and it did not take place during the period here involved.

(LEGESCH Exh.No.34 Doc.No.36 LEG. Book II 4. 36	
" " " 35 " " 37 " " " 39	
" " " 36 " " 39 " " " 40	
" " " 13 " " 47 " " " 35	
" " " 16 " " 54 " " " 47	
" " " 30 " " 33 " " " 22	

Examination SCHLOSSER Engl.Tr.p. 10511 G.Tr.p.10648	
" PETERS " " " 10632 " " " 10776)	

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The only direct personal contact between I.G. Farben and DEGESCH were the conferences of the Executive Board and the General stockholders' meetings which were held as a rule at the same time.

(DEGESCH Exh.No.18, Doc.No.14, DEG.Book I p. 55)

The last conference of the Executive Board (for the business year 1939) was held in 1940, the last stockholders' meeting (for the business-year 1941) in 1942.

(DEGESCH Exh.No.19 Doc.No.45 DEG.Book I p. 66-69

"	"	"	21	"	"	15	"	"	I p. 71
"	"	"	18	"	"	14	"	"	I p. 53
"	"	"	36	"	"	39	"	"	IIp. 40
"	"	"	34	"	"	36	"	"	IIp. 36
"	"	"	32	"	"	56	"	"	IIp. 27

MAN examination Engl. Tr. 10471/73

Gern. Tr. 10606/609

PETERS " Engl. Tr. 10634

Gern. Tr. 10777

As for the rest, the relations between the DEGESCH and I.G. Farben confined themselves from 1942 to 1945 to a very infrequent correspondence on subjects of a general nature and to the forwarding of the annual business reports.

(DEGESCH Exh.No. 56 Doc.No. 65 DEG. Book III p. 1

"	"	"	57	"	"	66	"	"	" p. 18
"	"	"	58	"	"	67	"	"	" p. 34
"	"	"	59	"	"	68	"	"	" p. 50

Fros.Exh. 17 73 NI-9093 vol. 82 Engl.Pg. 137).

as well as the monthly sales reports

(DEGESCH Exh.No.22 Doc.No.26 DEG. Book I p. 74).

Not one of these sources of information which were the only ones available showed anything about the Testa deliveries to SS offices, about the quantity of these deliveries and about the deliveries to such offices having been made directly contrary to contractual agreements omitting the irritant.

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(Pros. Exh. as quoted on page 26)

Whatever exists of correspondence between the DEGESCH and the sales combine BAYER has come to the knowledge of the Prosecution. Relevant evidence of this kind was not destroyed:

(Exh. DEGESCH No. 65	Loc. No. 75	Loc. Book III	page 63
" " " 71	" " 82	" " "	" 74
" " " 74	" " 85	" " "	" 79
" " " 68	" " 78	" " "	" 69
" " " 73	" " 84	" " "	" 77

Not one of these documents contains information that could - even indirectly - have conveyed a knowledge of the facts mentioned. If the Prosecution wishes to prove with this document material that in addition to the stockholders' meetings and the conferences of the Executive Board, meetings of all kinds took place between I.G. Farben representatives and the DEGESCH people then the very material submitted by it shows that such meetings no longer took place after 1942.

(Pros. Exh. 2100 Loc. NI-15052).

Thus even if it is imputed that such meetings meant an additional opportunity for obtaining information concerning the DEGESCH, yet there is nothing that would prove a knowledge on the part of I.G. Farben about deliveries of non-irritant Zyklon to SS offices directly, since these deliveries did not start at all until in June 1943.

(Pros. Exh. 1789 NI-7278 Book 83 page 10 Engl.)

In addition, the meetings in question were with regard to their nature not calculated at all to give the I.G. Farben an insight into the details of the DEGESCH

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business management. Within the period from 1935 to 1942, the conferences involved were, a so-called DEGESCH, conference between Degussa and I.G. Farben at Leverkusen of 15 March 1935 -

(Proc.Exh. 2099, NI-15056)

the only one of this kind that ever took place -

(MANN examination Engl.Transe. p. 10616, Germ.Tr.10760)

the so-called technicians' conference of the firms involved in the business with gaseous products (Gasesangeschaefte) which took place before the war

(Proc.Exh. 2101 N, -15033)

(referring to a Hamburg conference of 1937)

and a preliminary discussion of the balance-sheet within the sales combine BAYER-Leverkusen of 10 June 1941.

(Proc.Exh.2100 NI-15052).

The Prosecution did not furnish the least proof showing that at these few meetings extending over a long period details of the DEGESCH business management, in particular details of the Zyklon business, with which I.G. Farben was not familiar, were discussed. Apart from the fact that such detailed discussion of business particulars would not have been customary at such meetings,

(MANN examination, Engl.Tr.p.10626, Germ.Tr.10762)

this also contradicted the tendency followed by Degussa of keeping the other DEGESCH partners as far as possible away from getting to the bottom of the DEGESCH business.

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The case-in-chief of the Prosecution thus is based on an erroneous presupposition. It imputes that I.G. Farben possessed full insight into the DEGESCH and was informed of even such explicit details of the business transactions as individual deliveries. This was, however, not the case.

(DEGESCH Exh. No. 30 Doc. No. 33 LEG. Book II p. 22

" " " 34 " " 36 " " II p. 36

" " " 36 " " 39 " " II p. 40

" " " 37 " " 38 " " II p. 42

(MANN Examination, Engl. Tr. p. 10622, 10473

Germ. Tr. 10766, 10609

GOLDSCHMIDT " Engl. Tr. p. 12878/79

Germ. Tr. 13081)

For these reasons it was not known to the accused members of the Executive Board that the DEGESCH received copies of the shipping notices concerning the individual Zyklon sales from its representative firms Heli and Tasta and thus knew to whom the deliveries were made.

(MANN examination, Engl. Tr. p. 10473, Germ. Tr. p. 609)

This however kills all the conclusions of the Prosecution against the defendants at which it arrived from the quantities of the deliveries made to Auschwitz via the Tasta as well as from the fact that non-irritant Zyklon was delivered to SS offices directly. These facts were not known to I.G. Farben.

(MANN examination, Engl. Tr. p. 10475, Germ. Tr. p. 10611).

The defendants representing I.G. Farben in the DEGESCH had nothing in the least to do with these deliveries. As a matter of course they thus cannot be used as circumstantial evidence for a knowledge on the part of the defendants of the Auschwitz misuse of Zyklon.

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- b) Even a knowledge of all details of the DEGESCH business transactions need not necessarily arouse a suspicion of a criminal misuse of Zyklon by the SS.
-

But even if the members of the DEGESCH Executive Board would have been kept informed as to all details of the DEGESCH business transactions and thus would have obtained information on the extent of the Tsetsu deliveries to Auschwitz and of the direct deliveries of non-irritant Zyklon to Gerstein or Auschwitz, this need not by any means have had to excite suspicion, much less necessarily lead to the conclusion that the SS misused the Zyklon for criminal actions.

The large quantities of Zyklon delivered to Auschwitz via the Tsetsu could reasonably be explained by the nature of the Auschwitz camp being a reception camp for the East and the South-East. These lice-infested people coming from these areas constituted a particularly great typhus danger which under any circumstances had to be countered energetically.

(PETERS examination, Encl.Tr.10549, Germ.Tr.10609)

This resulted in an especially extensive demand for Zyklon B being the most effective anti-typhus preparation. This requirement did not depend on the existence of delousing chambers which were not established at Auschwitz until 1941. The larger quantities of Zyklon were required for decontaminating of billets, depots, etc. This was the obvious explanation for the Zyklon deliveries to Auschwitz in 1941.

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(R.USCHER examination, Engl.Tr.p.10562, Germ.Tr.p.10702).

The omission of the irritant was likewise by no means suspicious. Neither does the patent under which Zyklon is produced provide for an admixture of an irritant

(DEGESCH Exh.No.2 Doc.No.2, LEG.Book I p. 2/3)

HEERDT examination, Engl.Tr.p.10507, Germ.Tr.p.10644)

nor is such obligatory on the basis of legal regulations.

(DEGESCH Exh.No.38, Doc.No.40, LEG.Book NO.II p.44/45)

Already earlier non-irritant Zyklon had been supplied for special purposes as for decontamination of food-stuffs.

(R.USCHER examination, Engl.Tr.p.10563)64, Germ.Tr.p.10704)

How innocuous the delivery of non-irritant Zyklon thus was, is shown by the fact that even specialists published report on their experiences with non-irritant Zyklon

(DEGESCH Exh.No.39, Doc.No.30, LEG.Book II, p. 46).

There could have existed difficulties with regard to the manufacturing process which necessitated a temporary production of non-irritant Zyklon. As a matter of fact, this happened in May 1944 from which date on exclusively non-irritant Zyklon was produced.

(DEGESCH Exh.No.40 Doc.No.52 LEG.Book II p. 47

" " " 41 " " 29 " " " p. 48

" " " 42 " " 28 " " " p. 49

" " " 43 " " 51 " " " p. 50

" " " 61 " " 69 " " " p.57)

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Deliveries of non-irritant Zyklon directly without the mediation of Tests and Hall also took place on other occasions, as for instance, in the case of special deliveries to the Wehrmacht.

(DEGESCH Exh. No. 60 Doc. No. 51, Supplementary Book II).

Even a specialist as experienced in the field of the Zyklon business as the witness HEERDT, the inventor of Zyklon and for many years member of the DEGESCH Executive Board, during his examination declared that neither a knowledge of the Tests deliveries to Auschwitz nor the knowledge of the delivery of non-irritant Zyklon to SS offices (Gerstein) had excited his suspicion that the Zyklon quantities involved were designated for killing people.....

(HEERDT examination, Engl.Tr.p.10493, Germ.Tr.p.10630).

If now the Tests deliveries to Auschwitz and the deliveries of non-irritant Zyklon to SS offices had seemed harmless even to an expert like the witness HEERDT, how much less could then such knowledge - which, however, never possessed have made the I.G. Farben representatives with the DEGESCH, who had nothing to do with the DEGESCH product Zyklon, suspect a criminal misuse of Zyklon.

In addition, Dr. HEERDT had had personal experiences of the most unpleasant nature with the Nazi regime. Dr. HEERDT, as well as his wife, were in 1941 kept under arrest by the Gestapo for a considerable time because of their association with Jews, after his release, Dr. HEERDT was

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compelled to give up his position and residence.

(HEERDT examination, Engl.Tr.p.10488/89, Germ.Tr.p.10624/25).

In spite of the strong distrust against the National Socialist State and in particular against all SS offices resulting from this experience, the witness HEERDT never in the least even thought of the possibility of a criminal misuse of Zyklon. This is not possibly to be ascribed to the fact that the witness after he left Frankfurt/Main in 1941 lost his contact with the DEGESCH. Now as before, the same possibilities of obtaining information were available to him as to the other members of the Executive Board.

(HEERDT examination, Engl.Tr.p.10492, Germ.Tr.p.10629)

The defendant MANN neither ever entered a concentration camp nor even met a person who could report his personal impressions from such.

(MANN examination, Engl.Tr.p.10475/76, Germ.Tr.10612).

The witness HEERDT, however, visited the concentration camps Buchenwald and Mauthausen for business reasons in 1941.

(HEERDT examination, Engl.Tr.p.10494/96, Germ.Tr.p.10631/33).

However, even this direct contact of the witness HEERDT with concentration camps had, as he testified on the witnessed stand, not aroused his suspicion because of the Zyklon use by the SS.

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Those defendants who were the representatives of the I.G. in the DEGESCH, who had not such personal connections with the institutions of concentration camps, had therefore even less reason for mistrust.

In this connection it is worth while to point out that the local court at Frankfurt/Main had to discharge from custody because of lack of evidence the deputy business manager of the DEGESCH, KAUFMANN, who was under arrest for charges of participation in the Zyklon murders. The same is true of Dr. RAUSCH, the Prokurist of the DEGESCH at that time. (Exhibit DEGESCH No. 63, document No. 80, document book DEGESCH III page 56a).

The local court at Frankfurt/Main therewith refuted the charge that the persons who in their capacities as deputy business manager and as Prokurist of the DEGESCH had full insight into the details of the business transactions of the DEGESCH and who were therefore aware of the deliveries of cyclone to Gerstein and to Auschwitz by DEGESCH had any knowledge of the misuse of Zyklon carried out by the SS. The former chairman of the Vorstand of the Degussa, SCHLOSSER, whose connection with the DEGESCH was much closer than that of every single defendant with the latter, was likewise discharged from custody for lack of evidence by a decision of the District Court at Frankfurt/Main, against the witness Dr. HEERDT, who appeared voluntarily before the office of the public prosecutor at Frankfurt, not even a preliminary investigation was instituted.....

(Exh. DEGESCH No. 62 document No. 73, Document Book III, page 58).

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The Frankfurt courts are therefore of the opinion that even a far more detailed knowledge of the business transactions of the DEGESCH as that possessed by the defendants is not sufficient in order to draw any conclusions as to positive knowledge regarding the criminal misuse of Zyklon carried out by the SS. The only person within the DEGESCH who was aware if even to a limited extent of the fact that the SS used cyclone for the killing of human beings was Dr. PETERS, the business manager of the DEGESCH at that time. However, even Dr. PETERS does not owe this knowledge by any means to his insight into the details of the Zyklon-business, but solely to the fact that he was informed by SS-Obersturmfuehrer GERSTEIN to a limited degree about killings carried out with Zyklon.

(Examination PETERS, Engl.transc.p. 10530/36,
Gern.transc.p. 10669/74).

Consequently, Dr. PETERS was the only person from whom the defendants could have gained some information concerning the use of the non-irritant Zyklon delivered to GERSTEIN. Such did not take place. Between the defendants and Dr. PETERS existed almost no personal relations.

(Examination PETERS, Engl.transc.p. 10529, Gern.Transc.p. 10668
" " " " " 10474, " " " 10611)

Apart from this, Dr. PETERS was obliged to observe strictest secrecy and to talk with no one about the secret in which he was initiated by GERSTEIN.

(Examination PETERS, Engl.transc.p. 10531, Gern.Transc.
p. 10670).

Dr. PETERS adhered to this obligation for secrecy in the strictest manner and did not divulge anything to anyone about the utilization

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of the Zyklon deliveries of which he got knowledge not even to his closest co-workers in the DEGESCH.

(Examination PETERS, Engl. trans. p. 10536/37/38
Germ. trans. p. 10675/76/80).

- c) The nature and extent of information which the members of the Executive Board of the DEGESCH gained through the business reports and monthly sales reports did not enable them to learn of suspicious details regarding the business management of the DEGESCH.
-

The prosecution asserts furthermore that the members of the Executive Board had knowledge of the deliveries of non-irritant Zyklon by the regular receipt of monthly- quarterly- and annual reports of the DEGESCH.

This explanation is wrong. The I.G. received only annual reports but no quarterly reports and also no monthly reports.

(Exh. DEGESCH No. 33, doc. No. 27, doc. book DEGESCH II, p. 33
Examination PETERS, Engl. trans. p. 10629, Germ. trans. p. 10772
" M.N.N. " " " 10470, " " " 10606).

Apart from the annual reports, the Sales Combine BAYER at Leverkusen received only monthly sales reports containing merely the bare sales figures of the individual DEGESCH products.

(Exh. DEGESCH No. 22, doc. No. 26 doc. book DEGESCH I, p. 74 to 95.
" " " 33, " " 27 " " " II, p. 34
" " " 36, " " 39 " " " II, p. 40).

As sole source of information concerning the business affairs of the DEGESCH remained therefore the annual reports which contained only a description of the entire business development, but no details about individual transactions.

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Therefore, the annual reports shed no light on the direct deliveries on non-irritant Zyklon.

(Exh. DEGESCH No. 24 doc. No. 19 doc. book DEGESCH II, p. 1-7).

Just as wrong is the assertion of the prosecution that from the annual business reports the chief purchasers of Zyklon may be ascertained. Not one of the business reports for the years 1939-1944 contains data of such nature.

(Exh. DEGESCH No. 56 doc. No. 65 doc. book III, page 1
" " " 57 " " 66 " " " " 18
" " " 58 " " 67 " " " " 34
" " " 59 " " 68 " " " " 50)

Prosecution exh. No. 1773 doc. NI-9093 doc. book 82
English transcript, page 191).

Merely the total sales of Zyklon, subdivided as to domestic and foreign sales, are quoted. These figures show nothing more than a general increase of the sale of Zyklon during the war.

(Exh. DEGESCH No. 24, doc. No. 19, doc. book DEGESCH II, p. 2-7).

SS-agencies and concentration camps are mentioned in individual business reports, but only in connection with the installation of delousing stations. From this one could become aware of certain Zyklon deliveries, but it was wholly impossible to draw any conclusions as to the quantity of such deliveries.

(Exh. DEGESCH No. 27, doc. No. 23 doc. book DEGESCH II, p. 14-16).

(Examination PETERS, En 1. transc. p. 10631
Gern. transc. p. 10775).

As a rule, the business reports were received at the I.G. not until six months after the conclusion of the business year.

(Exh. DEGESCH No. 24, doc. No. 19, doc. book DEGESCH II, p. 1).

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The report for 1943 was not even received until February 1945.

(Exh. DEGESCH No. 24 doc. book No. 19, doc. book DEGESCH II, p. 1
" " " 25 " " " 24 " " " " " 9
" " " 26 " " " 25 " " " " " 11).

Not even at stockholders' meetings or Executive Board conferences were data concerning the individual purchasers of Zyklon or the quantity of those deliveries mentioned verbally.

(Exh. DEGESCH No. 32, doc. No. 56, doc. book DEGESCH II, p. 32
Examination PETERS, Engl. trans. p. 10539/40, 10634/35
German trans. p. 10676, 10777).

Because of the fact that the last meeting of the Executive Board took place in 1940,

(Examination PETERS, English trans. page 10639
German trans. page 10777)

and the last stockholders' meeting in 1942.

(Exh. DEGESCH No. 36 doc. No. 39 doc. book DEGESCH II, page 40),
this excludes from the outset even the theoretical possibility that the deliveries made to GERSTEIN, which started in June 1943, could have been discussed.

(Exh. 1739 document NI-7278 doc. book 83, page 10
" DEGESCH No. 18 doc. No. 14 doc. book DEGESCH I, page 54
" " " 32 " " 56 " " " II, " 30).

Furthermore, this fact proves that during the entire period in which Zyklon was misused, only one single meeting of the DEGESCH stockholders took place, namely the last stockholders' meeting of 4 September 1942.

(Exh. DEGESCH No. 21 doc. DEGESCH No. 15 doc. book I, p. 71).

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- d) The sales increase of Zyklon during the war was a normal development, which could arouse no suspicion.

The only fact concerning the Zyklon business, of which the members of the Executive Board became aware, was the heavy increase in the sales of Zyklon. The prosecution asserts now that this sales increase should have aroused the suspicion of the defendants. First of all this can be contradicted by the fact that the increase of foreign sales between 1939 and 1943 was even greater than the domestic sales increase.

(Examination RAUSCHER, English trans. page 10560, 69
German " " 10700, 07

(Exh. DEGESCH No. 49 doc. No. 70 (chart)

" " " 50 " " 71 (")

" " " 56 " " 65 doc. book DEGESCH III p. 1.

" " " 57 " " 66 " " " " " 18

" " " 58 " " 67 " " " " " 34

" " " 59 " " 68 " " " " " 50

Prosecution exh. 1773 doc. NI-90,3 doc. book DEGESCH p. 137).

In fact, a comparison of the foreign sales with the domestic sales must have proved to the Executive Board members that the total sales development was only a natural consequence of the war, which indeed was actually the case.

(Exh. DEGESCH No. 29 doc. No. 20a doc. book DEGESCH II, p. 20/21
" " " 31 " " 34 " " " " " 26

Examination RAUSCHER Engl. trans. page 10560
German " " 10700).

The enormous increase in the demands for effective delousing agents brought about also an increased demand for other decontamination agents. The demand for decontamination agents during the first year of the war for 30-40 Million sqm area, increased to 180 Million sqm area during 1943/44.

(Exh. DEGESCH No. 46 doc. No. 21 doc. book DEGESCH II p. 58).

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It became therefore necessary to utilize even substitute decontamination agents to a large extent.

(Exh. DEGESCH No. 32 doc. No. 56 doc. back DEGESCH II p. 32
" " " 36 " " 39 " " " " II p. 41)

Examination	SCHLOSSER	Engl. trans.	page	10514
	Germ.	"	"	10649
"	PETERS	Engl.	"	10537
	Germ.	"	"	10676
"	RAUSCHER	Engl.	"	10561
	Germ.	"	"	10701).

Furthermore, the sales of the I.G. produced decontamination gaseous agent, the "Dianeten", increased tremendously and surpassed even by far that of Zyklon.

(Exh. DEGESCH No. 28, doc. No. 20 doc. back DEGESCH II, p. 19)

All this was a consequence of the concentration of human beings, the mass movements and last but not least the large influx of people from lice infested areas in the Eastern and Southeastern parts of Europe. The typhus danger inherent in lice-infested people as carriers necessitated energetic counter-measures. It is therefore quite natural that the sale of the most effective anti-typhus agent increased correspondingly.

(Exh. DEGESCH No. 30 doc. No. 33 doc. back DEGESCH II p. 23
Examination RAUSCHER English transcript page 10561
German " " 10701).

In view of these conditions it was even impossible to satisfy fully export demands for Zyklon, a demand which increased also in foreign countries during the war.

(Examination RAUSCHER, English trans. page 10561
German " " 10701/02).

The prosecution opposes this argument by referring to the fact that the Zyklon sales decreased considerably in 1941, although German Armies were deep in Russia at that time which fact consequently brought about a heavy increase of lice-infestations and therewith also an increased danger of typhus infections. Furthermore, the prosecution tries then

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to bring the new heavy increase of the Zyklon sales during 1942 and 1943 in connection with the gassings at Auschwitz.

To proceed from this premise is incorrect. The decline of Zyklon sales in 1941 can be easily declared as a phase of the whole development. It is true that the War in the East had started (middle of 1941). However, the demand on delousing agents arising from this event did not become apparent until the following year.

(Examination RAUSCHER, English transo. p. 10567
German " " 10706).

This becomes clear also from the business report for 1941 which states:

"The Zyklon sales, which in view of the special demands confronting us in Alsace-Lorraine and in the occupied territories of France, reached a record high in 1940 dropped somewhat during the report year, because there has been little time so far for requirements for the eastern territories to take effect."

(Exh. LRGESCH No. 56 doc. No. 67 doc. book DEGESCH III
page 34).

It is true therefore that the knowledge which could be gained from the development of the Zyklon-sales as depicted in the business reports and monthly sales-reports, could never lead to the assumption, or even to the suspicion, that the Zyklon was misused for criminal purposes.

- e) On the whole, it is impossible to trace back the increase of Zyklon sales to the misuse of Zyklon by the SS.

The prosecution advocates the absolutely ridiculous idea that the increase of Zyklon sales can be traced back to the use of this gas for mass killings.

The quantity of Zyklon necessary for the killing of warm-blooded creatures

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- therefore also for the killing of human beings - is negligible. Even if millions of human beings are killed with Zyklon, the demand as to quantity is hardly worth mentioning, a fact which was proved by the RAUSCHER affidavit

(Exh. DEGESCH No. 64, doc. No. 74, doc. book DEGESCH III, p. 59),

the examinations of Dr. RAUSCHER,

(English transcript page 10564,

German transcript page 10704/5)

and the examination of Dr. REERDT

(English transcript page 10485, German trans. page 10622).

The total deliveries to the Waffen-SS, including those to concentration camps, amount on the average during the years from 1941 until 1944 to approximately 1/10 to 1/15 of the total sales of Zyklon.

(Examination PETERS, English transcr. page 10538
German " " 10676).

This percentage of the SS-deliveries (in which all deliveries to concentration camps are included) repudiates unequivocally the assertion of the prosecution that increase of Zyklon sales in the years 1942/1943 was due to the misuse of Zyklon in the Auschwitz concentration camp. From 180 tons of Zyklon sales in 1939,

(Exhibit DEGESCH No. 75 doc. No. 65 doc. book DEGESCH III p. 9)
which increased to 411 tons in 1943,

(Exh. DEGESCH No. 76 doc. No. 68 doc. book DEGESCH III p. 55)

the SS received in 1943 (the year of its highest consumption) only 50 tons. Thereby, it has to be taken into consideration that these deliveries to the SS were by no means for preponderantly criminal purposes, but that by far

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the greatest part of these deliveries served for the decontamination of rooms and for delousing of clothing apparel.

However, by this the bottom is also knocked out from under the infamous inculpation of the prosecution that the I.G. intentionally drew gigantic profits from the systematic mass murder of innocent human beings. Moreover this conjecture of the prosecution is based on a distortion of the actual facts also in an other connection. First of all, it is not necessary to point out in detail that the participation of the I.G. in the small DEGESCH was of any importance. Furthermore, the average yield which the I.G. received from its participation in the DEGESCH amounted in 1942 and 1943 by no means to 200%, as asserted by the prosecution, but only to 21.6%. This constitutes a yield which was achieved also in 1937 and 1938. If the prosecution calculates a yield of 200% then it arrives at this figure by reducing its computation to the nominal capital, stock but it intentionally does not take into consideration the fact that the I.G. paid de facto RM 392,500.00 for the acquisition of DEGESCH shares at a nominal value of RM 42,500.00,

(Exh. DEGESCH No. 7, doc. No. 5, doc. book DEGESCH I p. 20
" " " 8, " " 17, " " " I p. 21)

and that the I.G. delivered its products to the DEGESCH at cost price.

(Exh. DEGESCH No. 9, doc. No. 17a, DEG. doc. book I, p. 23-26)

Finally, also the very considerable preliminary costs of the research and development of the individual products have to be included into the computation.

(Exh. DEGESCH, No. 32 doc. No. 56 doc. book DEGESCH No. 2 .

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C. THE INDICTED MEMBERS OF THE EXECUTIVE BOARD
ALSO HAD NO KNOWLEDGE FROM GENERAL SOURCES
OF THE MASS GASSINGS

Now it remains only to check the question as to whether the defendants did not know from general sources of information, apart from their Dagesch-participation, of what happened in Auschwitz with a part of the Zyklon originating with the Dagesch.

- a) The defendants were not informed of the foreign publications about the mass gassings during the war.

The defendants were not acquainted with any of the foreign publications about the program of mass extermination to which the indictment refers.

(Examination of Mann, Transcript Eng. page 10,612/13
German p. 10, 755/56).

This is not further to be wondered at, for these publications did not receive the attention which they really deserved, even in neutral countries. The witness Struss, who had heard rumors about human gassing during his stay in Auschwitz in 1943, tried to learn more through intermediaries in Switzerland and in Spain. This was unsuccessful. Thus it may be seen that even in these two non-belligerent countries the publications mentioned by the indictment were as good as unknown.

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A number of good reasons could be cited as to why these publications did not meet with the attention expected. The last decade had poured a flood of propaganda without compare over the European countries, and especially over Germany. The scepticism awakened and reportedly fed thereby concerning reports of which it was even only remotely suspected that they belonged to the field of "psychological warfare" may perhaps be correctly ascribed only by those who lived through these years in Europe. At any rate, psychological resistance was thereby aroused which seriously impeded the spreading of such news, which in turn led to the fact that they came to the attention of only a very limited circle of people.

Experience from the first world war also produced an extremely strong reserve with regard to such news. International scholarly historical research was in agreement soon after the end of that war that the greatest part of the contemporaneous reports about war atrocities could not withstand an objective scholarly investigation. This was an experience which had been stamped into the memory of the Europeans, and which in the analogous situation of the second world war made the spreading of such news extremely difficult.

Furthermore, one must not overlook the fact that it is human nature

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to treat reports of crimes of such an enormous extent as they were practiced at Auschwitz, only with extreme distrust. Even knowing the criminal character of the Nazi leadership, sober and empirically judging people would have to say that accusations were being leveled here which exceed every standard tested by experience, and which therefore do not deserve to be believed. This too harmed the spreading of these foreign publications. By those whom they perhaps accidentally reached, they were not taken seriously for the most part and as a result were not spread further.

In addition there naturally comes the factor that the Nazi dictatorship absolutely controlled all "legal" sources of news and therefore barriers which could be overcome only with great difficulty stood in the way of the spreading of news from abroad. This system of news control was effectively supplemented by a secretly directed whisper campaign the goal of which was to rob all unfavorable news from abroad regarding Germany of credibility by obviously false rumors which were recognizable as such, and thereby to hinder the spread of such news from the beginning.

In the final analysis, the coincidence of these circumstances had the effect that only an increasingly smaller number of persons in Germany received knowledge of the reports from foreign, particularly from American quarters.

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An unusually large number of coincidences had to be present if they were once to reach a German in spite of everything.

Thus, the witness Reuscher never heard anything of mass gassings during his stay in Turkey until 1943, although he subscribed to a Turkish newspaper and frequently read American newspapers also.

(Examination of Reuscher, Eng. transcript p. 10,559, German page 10, 699).

To what a small extent the knowledge of the mass gassings was circulated may also be seen from the fact that none of the numerous Jewish friends and acquaintances of the witness Reuscher in Bulgaria ever spoke of any fears to this effect, even when the compulsory deportation of the Bulgarian Jews was imminent. In these circles one only expected deportation for forced labor, but not a planned extermination.

(Examination of Reuscher, Eng. transcript p. 15,559 German " " 10,699).

b.) Knowledge of the fact that the Jews were persecuted does not at the same time signify knowledge of the mass extermination.

The general knowledge of the defendants is supposed, according to the prosecution's interpretation, to have been further revealed by the fact that the events connected with the persecution and final extermination of the Jews by their very nature could not remain hidden in Germany

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and therefore had to come to the attention of the defendants.

This argumentation is not conclusive. Certainly, it was generally known in Germany that the Jews were being persecuted. It was known that their rights as citizens were curtailed and that they were robbed of their political rights. Most Germans were probably also forced to become eyewitnesses to organized excesses against them.

(Examination of Mann, Eng. transcript p. 10, 477,
German " p. 10,114).

It was perhaps also known that part of the Jewish population had been deported, without any clear idea of the extent of these deportations and the fate of the persons deported. The idea was wide-spread that the Jews were being resettled in closed settlements etc. etc. Actually, Hitler had spoken of concrete plans of this sort in a speech of 6 October 1939, immediately after the end of the war against Poland.

(Examination of Haardt, Transcript, Eng. p. 10,493/94
German p. 10,631

Exh. Mann No. 335, Doc. No. 461, Supplement Vol. 3 and 6). From a general knowledge of the fact that the Jews were oppressed, persecuted and threatened, to the knowledge of mass exterminations is, however, still a long step. These persecutions may today appear to be parts of a plan of extermination directed against the Jews. At that time, however, they were not to be recognized as such.

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This is also the interpretation of the judgement in Case III. Although this judgment proceeds from the fact that the defendants by virtue of their official position as high judicial officials had a very extensive knowledge of the persecution measures against the Jews,

(cf. Judgment Case III, Eng. page 10,803 ff.

German " 10,781 ff.)

it states on page 10,931 (Eng.) with reference to the defendant Altstoetter:

"Conceding that the defendant did not know of the ultimate murders in the concentration camps and by the Einsatzgruppen".

In this instance, Altstoetter was a high government official and SS-Fuehrer, who was as such doubtless in possession of better information and sources of information than any of the defendants ever were, who had no connections of any sort with the SS.

The excerpts from German publications compiled by the prosecution in Document Book 89 never came to the attention of the defendant Mann.

(Examination of Mann, Transcript, Eng. p. 10,649/50;
German " 10,793/94).

Let me remark only that these inflammatory publications in the compilation presented can easily lead to incorrect conclusions regarding the extent of the general knowledge of the persecution of the Jews in Germany. One must, however, take into consideration in this connection the fact that one or another of these publications came to the attention of the individual, never, however, all of them, or even only a

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fairly large part. The impression resulting from the total effect of these quotations could, therefore, never have been formed, even in the case of a well-read German.

- c.) The knowledge through rumors on the part of a few individual persons of the concentration camp horrors cannot be generalized.

It is not to be disputed that there were a few people in Germany, who, without having personally participated in the mass gassings, knew of them. In these cases, either the frequently existed paths of coincidence or the access to particular sources of information brought about this knowledge; the mass of the German people, however, had no such sources of information.

Circumstances permitted the witness Alfred Saun to be an involuntary witness to a quietly conducted conversation in a Hamburg streetcar in 1941 or 1942, in which the fact was mentioned that "now Jews and insane persons were killed".

(Examination of Saun, Transcript, B. page 5486/83,
German page 5521/23).

A similar coincidence brought to the attention of the witness Struss during his stay in Auschwitz in 1943 a rumor of cremations in the Auschwitz concentration camp.

(Examination of Struss Transcript B. p. 13,569,13,573
G. p. 13,765,13,769).

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The witness Diels had more detailed knowledge of the gassing of persons.

(Pros. Exh. 1761 Dec. XI 11,957 DB 82 E. p. 46
Examination Diels Trans. E. p. 4426-38, G.p. 4443-55)

Diels, however, owes this knowledge to his close connections with leading Party circles and the SD.

(Exam. Diels Trans. E.p. 4429-30
G.p. 4446-48-45)

In his affidavit

(Pros. Exh. 1784 Dec. XI 11,396 DB 82 E.p. 38)
the witness strictly limited his original claim that in Germany there was general knowledge of the gassing with Zyklon, in the cross examination and limited the knowledge of this fact to such persons who were opposed to the Nazi regime. He then admitted, upon being questioned by Dr. Heintzeler, that even such persons who belonged neither to the opponents of the Nazis nor to the out-and-out Nazis for the most part had no knowledge.

(Examination of Diels Trans. E.p.4427, G.p.4444).
Actually, according to his own testimony, the witness owes his knowledge to an SD man and not to his own possible connection with opposition circles.

(Examination of Diels Trans. E. p. 4429, G.p. 4446).

Thus, both the witnesses Alfred Zorn and Dr. Struss, and the witness Diels present definite special cases which do not justify the drawing of generalizing conclusions.

- d) The indicted members of the Executive Board of the Degesch had no connections of any sort to Auschwitz.

The Bunawerk of I. G. Farben in Auschwitz also did not transmit the knowledge of the Auschwitz mass killings to the defendants, as the prosecution claims. None of the indicted members of the Degesch Executive Board had anything at all to do with the Auschwitz plant.

(Examination Lann Trans. E. P. 10,613-14 G. p. 10,757-58)
Even actual constant contact with Auschwitz regularly brought about only a knowledge of every possible incredible rumor, but no knowledge of the actual events. These rumors did not penetrate to the Reich.

(Examination Wuench Trans. E.p. 14,322/35, G.p. 14,661/81).

The knowledge of the indicted members of the Executive Board of the concentration camp Auschwitz could not be differentiated from the ideas which the average German had of a concentration camp. Even the affidavits of former prisoners of war, who were employed by I. G. Farben in Auschwitz cannot change anything with regard to this.

(Trial Brief of the prosecution, p. 40-51)

The defendants lacked any actual and social contact with the Auschwitz prisoners' environment. Their leading position in I. G. Farben did not by any means afford them, therefore, as the prosecution maintains, particularly favorable sources of information, but on the contrary, as a result of their position, they had no contact with that

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circle of persons from which the witnesses cited by the prosecution in the trial brief come. The defendants, who lived 1000 km away from Auschwitz, had therefore essentially fewer chances to learn anything from this circle than many average Germans. Even longer stays in Auschwitz did not necessarily afford knowledge of the events in the concentration camp. I take the liberty of referring insofar to the arguments in the trial briefs of Dr. Hoffmann and Dr. Seidl.

D. SUMMARY AND LEGAL EVALUATION.

The indicted members of the Executive Board, therefore, never took part in deliveries of Zyklon to SS offices, nor did they even know anything about such deliveries. They were neither in possession of knowledge of the gasings, nor naturally, much less of the fact that they were performed with Zyklon. The Zyklon business of the Degasch was as a result a completely unproblematical, purely economic transaction for them, which could not be connected with the National Socialist persecution of the Jews. The Degasch was an old enterprise

(Exh. Degasch L Doc. No. 1 Vol Deg. I p. 1), which had been producing Zyklon for decades

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without any criminal misuse of Zyklon ever having taken place.

(Exam. of Dr. Goldschmidt Trans. E. p. 12,875,
G. p. 13,078).

As a result, these defendants were not obligated to step out of their normal passive attitude as members of the Executive Board and to stop Zyklon deliveries to SS offices by actively influencing the business management of the Degesch.

When the prosecution accuses the defendants Mann, Hoerlein and Wurster that they, as members of the Executive Board of the Degesch, could have had the opportunity of learning more details concerning the connections between the Zyklon and the Auschwitz mass gassings by investigations of these circumstances, they presume knowledge or suspicion on the part of the defendants that such gassings took place. Neither ever existed.

The preceding statements from the Nurnberg administration of justice quoted by the prosecution in support of its theory

(Trial Brief of the Pros. E. p. 57/58)

concern cases which are entirely different. Although they are quotations torn from their context, the precedents cited under No. 89/90 and 91 show the basic difference of the cases tried there from the situation of the defendants in this case.

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The defendant Mann and the other I. G. representatives in the Degasch represented the capital interests of I. G. Farben in an enterprise whose product, Zyklon, was being misused by the SS for criminal purposes. The persons named had no influence on these deliveries and neither did they know about the fact of these deliveries nor did they know about the Auschwitz gasings and the role played by Zyklon in them. Thus they merely took part in a quite old -established normal industrial enterprise.

(Exh. Doc. 1, Doc. No. 1, Vol. Doc. 1, p. 1)
and besides, that it was also still subject to the strict Government security regulations.

In contrast to this, the case mentioned in No. 89/90 of the Trial Brief, concerns the execution of Hitler's program of euthanasia and experiments on human beings under the responsibility of the defendant Brandt. Here, the actions of the defendant Brandt were from the beginning treading the thin boundary line of crime, a fact which incriminated him with the responsibility for actions of this sort on the part of his executive organizations as well, which did not come to his attention. The case of the defendant Mummenthey cited under No. 92 is very similar.

The same applies also to the case of the defendant Funk, cited under No. 93, although the brevity of the quotation does not make this fact apparent. The findings of the IMT judgment make it apparent, however, that Funk had issued

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the order to his subordinates that no unnecessary questions were to be asked regarding the origin of the valuables turned over by the SS. Funk was thus aware of the criminal origin of these objects, even if he perhaps did not know the more intimate details. Only on the basis of this finding does the I.F. judgment come to the conclusion that Funk

"either knew what had been received, or that he intentionally closed his eyes to what happened."

All the precedents cited by the prosecution clearly show, consequently, that there is no question of punishable conduct on the part of the indicted members of the Dagesch Executive Board.

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CLOSING BRIEF ANSWERS
(ENCLOSURE)

MILITARY TRIBUNAL VI

Closing Brief
for
Otto AMBROS

*Corrected copy
of Karl P. Hoffman and
before counsel*



Index and Prosecution Exhibits mentioned

in Brief for Otto Ambros

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A

Otto AMBROS as Chemist

AMBROS being a chemist, is the result of an innate gift. He had the luck to find as teacher Prof. WILLSTAETTER, of Munich, the leading organic chemist of his time. In 1926 "on the recommendation and advice of Richard WILLSTAETTER", he accepted a position at the I.G. Farbenindustrie (OA-Doc. 101, volume 1A, page 2; OA-Doc. 103, volume 1A, page 12).

For the tasks awaiting him there, AMBROS "had the basic prerequisites", passionate love and enthusiasm for chemistry, and an extensive knowledge of its basis and an imaginative gift for the solving of chemical problems (OA-Doc. 108, volume 1A, page 22).

The possibilities which were provided for him by the I.G. increased his "pleasure in creative work which is characteristic of him" (OA-Doc. 110, volume 1A, page 30).

His promotion in the I.G. Farbenindustrie was logical and obligatory. The I.G. had recognized AMBROS as an "outstandingly and promising young executive" (OA-Doc. 106, volume 1A, page 18). He was generally considered "to be one of the most talented and most promising" younger chemists (OA-Doc. 110, volume 1A, page 29). His final appointment as a member of the Vorstand of the I.G. Farbenindustrie is "undoubtedly to be explained only by his technical abilities and talents as an organizer" (OA-Doc. 106, volume 1A, page 18).

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"He acquired executive positions at an early age, which is exceptional even in the case of talented people and is only possible if the respective field of work acquires such great economic significance as was the case with the Buna manufacture and polymerisates" (OA-Doc. 110, volume 1A, page 30).

"However, AMBROS resented exaggerated personal ambitions" (OA-Doc. 110, volume 1A, page 30). He regarded his position at the I.G. only as possibility to realize the results of his scientific research in the service of technical progress for the welfare of the people. His increasing field of tasks within the I.G. was regarded as such a possibility by outsiders. Men, who on account of their opposition to the Nazi regime and their rich experiences were capable of rendering an especially critical judgment "welcomed his rapid rise.... in the interest of industrial progress" (OA-Doc. 103, volume 1A, page 12).

Professor WILLSTAETTER, who, as a Jew, was subject to the racial laws of the Nazi regime and, therefore, had an especially critical attitude, congratulated AMBROS on the occasion of the taking over of the management of all laboratories and plants in the intermediate products groups at Ludwigshafen by saying "it is a wonderful field of activity" and it has "productive possibilities" (OA/Doc. 105, volume 1A, page 16). On the occasion of the appointment as member of the Vorstand of the I.G. Farben in 1938 Prof. WILLSTAETTER congratulated AMBROS "on your important new position as well as on the remarkable progress and results of your

pioneering work on the most important problems confronting the chemical industry today". (OA-Doc. 108, volume 1A, page 20) He never regarded Otto AMBROS as a representative of the Nazi Regime.

"He took the keenest interest in the progress of search work, which he was able to promote by his own suggestions and proposals." (OA-Doc. 108, volume 1A, page 22) The Ludwigshafen laboratories managed by him belong to the most important ones in the world and had a decisive part "for many modern developments in the field of organotechnical chemistry." (OA-Doc. 108, volume 1A, page 24)

"All essential planning and designs for the numerous factories directed by him were thoroughly discussed by him with his assistants, and the installations in his works showed the proof of this great practical talent". "Next to the laboratories the designing office was his favorite spot". (OA-Doc. 108, volume 1A, page 24)

Also in the plants planned and erected by AMBROS his important activity with regard to these works "was decisively influenced by the demands of chemistry and technology". (OA-Doc. 116, volume 1A, page 44).

The transfer of the laboratory experiments in the field of the macromolecular chemistry to technology, the introduction of new polymerisation processes, the development of plastics and Buna, the designing of the continuous carbide furnace are striking examples of his life-work. It found national and international recognition. "(Gold medal world-fair Paris 1937. OA-Doc. 123, volume 1A, page 61, bestowing of ^{Dr} fer.nat.

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n.o. 1943/OA-Doc. 126, volume 1A, page 110, received Todt-Price 1944) (OA-Doc. 101, volume 1A, page 9). They were carried by the general big "boom of plastics" 1934-1939 everywhere in the world (transcript German page 7794, English page 7757/58). AMBROS did not, however, pursue any political aims. He is an independent "completely non-political character" (Transcript German page 7794, English page 7757/58) so that he repeatedly even thought of leaving the I.G. in order to "content himself with a more modest but independent position capable of development (OA-Doc. 110, volume 1A, page 30).

When he had still "ample time for work in the laboratory to really participate in scientific works and was able to publish" (c.f. OA-Doc. 121, volume 1A, page 54) this period was to him a happy period" (transcript German page 7794, English page 7757/58. Thus according to his character he was also free from any consideration of political nature in connection with the aims of his life-work.

Richard LINDE, the Chief of the internationally known company "Linde's Eis Maschinen" states in his affidavit: (OA-Doc. 109, volume 1A, page 27)

"AMBROS belonged, to my knowledge, to those men who were to be credited with the decisive progress made in the field of modern aliphatic chemistry. (Dr. AMBROS' basic attitude is that of an avowed scientist and technician."

Additional tasks which were entrusted to Otto AMBROS during the war. The war caused a considerable increase of Otto AMBROS' work as chemist (OA-Doc. 102, Exh. 18., volume 1A, page 11).

The conditions of the war required an exclusive concentration on the chemio-technical side. This could

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be mastered only by limiting the efforts to the most important matters. Otto AMEROS "was one of the few chemists ... who, above all, remained to be chemists" (OA-Doc. 108, Exh. 41, volume 1A, page 22). He remained true "to his basic attitude" as avowed "scientist and technician" (OA-Doc. 109, Exh. 42, volume 1A, page 27).

B

Buna as a part of the personal life-work of Otto

AMEROS

On the occasion of the last international congress of the chemists of the world in 1938, Dr. KONRAD, the chief of the scientific laboratory for rubber-research lectured on the Buna synthesis. He emphasized that it was in accordance with the I.G. tradition to serve with the development of the Buna synthesis "the technical progress and the rise of the entire world" (Doc. ter Meer 171, Exh. 111).

Contrary to that the prosecution is of the opinion that these efforts and in particular the erection of the two plants:

Schkopau in central Germany on the soft coal, and Huels at the Western border on the coal served the preparation of a war of aggression.

For many reasons this theory of the prosecution is

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wrong.

I. Development and aims of the Buna synthesis.

- 1.) The development works started in 1906 and were not influenced by any political motives

The development works of the I.G. in connection with the synthesis of rubber were started tens of years ago. As far as time is concerned a line is to be drawn between "three stages"

- a) the work from 1906 to 1919. It is connected particularly with the name of Fritz HOFFMANN.
- b) Development works from 1926 to 1934.
- c) From 1934 onwards the technical expansion of the production plants, and the increasing use of the new synthetic materials in rubber technology." (ter Meer Doc. 171, Exh. 111, page 3)

Doc. ter Meer 187 Exh. 127 impressively describes the details of the development of these works on a problem important both in the field of science and technology during the period of our modern industry. Therefore, original cause for and course of these development work was not influenced by any political motives.

On the contrary, the development of the rubber synthesis was "in the air".

It was an object of international research. "England which worked thoroughly on the problem of synthetic rubber", as well "as France and Russia" to a certain extent were concerned with this problem. (Transcript German page 7025, English page 6955).

The interest of the world in the problem of producing synthetic rubber remained alive also after 1933 (ter Meer Doc. 230, Exh. 171, Doc. 231, Exh. 172).

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The increasing importance which the material "rubber" has in the economic and national life of the nations is the reason for the fact that today many countries ~~work~~ work on the technical synthesis of rubber (ter Meer Doc. 171, Exh. 111).

After the merger in 1926 the I.G. resumed its experimental work on a large scale and invested millions in these experiments (ter Meer Doc. 207, Exh. 147, Doc. 186, Exh. 126).

The experiments were never discontinued but were only considerably reduced on account of the economic crisis in Germany at the beginning of the thirties.

2.) The research activity of Ambros started prior to Hitler's seizure of power and was a logical result of his tasks in the chemical field.

The works of Ambros in the field of rubber chemistry started a long time before Hitler. The later continuation on a technical scale resulted from his position as chemist in the scientific laboratory at Oppau, respectively from a stay in Sumatra, and this was entirely logically "since the manufacturing of synthetics also belonged to the section of the Ludwigshafen works which was under the supervision of Dr. AMBROS" (OA-Doc. 106, Exh. 24, volume 1A, page 18).

"Since 1928 he was, at the beginning, active in the scientific and Buna field at Oppau and then from 1934 onwards (he) at the group for intermediate products at Ludwigshafen developed the decisive stages of the technical Buna process". The I.G. produced Buna in four steps or stages. Two of these stages were invented at

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Ludwigshafen. "The first step, to make carbide, was already known and thus "was charged to AMBROS, resp. his department (Transcript German page 7865, English page 7793). In this field AMBROS carried on from "the preliminary works which Elberfeld had started in 1911, Leverkusen had developed during the first world war and which in 1928 had been taken over by Oppau, Ludwigshafen, Hoechst and Leverkusen (Transcript German page 7866, English page 7794).

Thus the research direction of Ambros is the result of tens of years of tradition and was not guided by any political or military considerations.

3.) AMBROS' Sumatra trip in 1930 too was wholly dictated by research for aims of peace-time economy. This fact is especially shown by the purpose of this trip which AMBROS, by order of the I.G., undertook for reasons of research work in 1930 to Sumatra, Ceylon and the Malaine states.

This trip was to serve certain purposes. He (AMBROS) had been given the task to study as to how nature produced rubber, and thus he went to the rubber plantation and worked in his laboratory at Geheilarat FICKENDEY, he then went to the Standart Oil at Palembang and then to the English at Ceylon and studied all tropical cultures. This trip gave him an insight into the plant which were actually in competition with the syntheses (Transcript German page 7792, English page 7756, OA-Dec. 104, Exh. 22, volume 1A, page 14).

The main thought in this ⁱⁿ connection was

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- a) the conviction that it would be possible to make progress in this respect (the production of synthetic rubber) if the characteristics of natural rubber were studied, not only on the latex supplied from the countries of origin, but also at the point of origin itself, i.e. on the very trees supplying the rubber."
- b) The trip had also the purpose "to obtain information on the competitiveness of synthetic rubber as against that of natural rubber, by means of determining the costs of production" (CA-Doc. 110, Exh. 42, volume 1A, page 29).

These two moments of

- a) Creation of an equivalent substitute for natural rubber and
- b) the competitiveness as far as price was concerned of this substitute remained decisive for the future work in the Buna research and for the Buna production.

The final aim was to find in Buna a synthetic rubber which some day would replace the natural product just like the synthetic dye replaced madder and indigo. It was a task of technical progress.

II. Transfer of the laboratory results to practical technology

- 1.) The transfer to practical technology became necessary on account of the special situation of the German economy

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Besides the advanced stage of development of the German research in this field, the special economic conditions of Germany were the reasons for the fact that the experimental works in the Buna field were for the first time transplanted to practical technology in Germany. A document of that time, excerpts from the records of the OKH (WA Pruef 6) of autumn 1938, shows clearly the reasons for "the very high interest which Germany had in the field of synthetic rubber since 1933". "The first reason was that, caused by the international crisis as far as sales were concerned, German export had steadily decreased since 1930, while Germany's consumption of foreign raw materials increased continuously.

In 1933 the German industry, at a production value of about 41 billions Mark, consumed indigenous and foreign raw materials amounting to about 5 to 6 billions Mark. In view of the continuous enlivening of the domestic market and the domestic requirements increased by the lowering of unemployment the raw material consumption of Germany, as compared to 1933, increased considerably in the years to come. The decrease of export and the increase of import caused that the commercial balance was debited, and this, -plus the sums which Germany had to pay to foreign countries - caused that the gold and foreign currency reserves of the Reichsbank decreased continuously.

In view of the limited German raw material basis decisive measures were taken. They considered especially of

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- a) a diminution of foreign exchange quotas , , , , ,
- b) the surveillance of raw material imports , , , , ,
- c) the procurement of equivalent replacements for imported raw materials by means of German products" (Doc. ter Meer 175, Exh. 115, page 20/21),

None of the documents submitted shows the slightest proof for this. The planning and preparation of a war of aggression had never been discussed. In the time of the motorization, rubber was given a task which is decisive for life, and every State tries to secure this raw material source. Even in the USA the dependence upon "England" and Holland" is regarded as highly troublesome (NI 8324 Exh. 95)

In view of this situation of world economy, Germany seemed to have no other possibility then to proceed on the way of the synthesis. That the Army was later interested in the Buna synthesis as replacement for natural rubber which could not be purchased on account of the situation in the field of foreign currency is just as natural as the fact that every Army has, in this time of motorization, to be interested in the securing of its requirements in rubber.

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3.) Economic or political motives were of no importance for AMBROS.

His task was a purely chemio-technical one.

AMBROS, however, could not have been interested at all in the motives which may have caused the government to promote the erection of Buna factories. At that time - 1934 - AMBROS was a paid chemist in the I.G. and his post was equivalent to that of a procurist. He as expert, was commissioned by his superior, the Spartenleiter for MEER, with the carrying out of the rubber synthesis and that in the capacity of "leading chemist" and chief of the development, planning and organization construction of the Buna plant, "not in the capacity of an engineer but to transplant the chemical experience gained in the laboratories and experimental plants to production on a large scale" ... In this connection, Dr. AMBROS, as the younger chemist and technician who was ~~also~~ ^{still} employed in the plant and who planned the construction of the factories, discussed these matters in all details with the MEER.

(Transcript German page 7034, English page 6954) For MEER'S activity consisted mainly in "conducting negotiations with the various authorities and that part of private industry which processed rubber" (Transcript German page 7034, English page 6954). Thus, for MEER conducted also the negotiations concerning plant Schkopau (Exh. 550 NI 882 volume 28, German page 70, English page 49).

AMBROS himself was satisfied with this distribution of work, which by the way was maintained also after he had become a member of the Vorstand (Transcript German page 7025, English page 6954). He, as chemist, considered the chemical work as the "perhaps nicer part" (Transcript German page 7800, English page 7764). This explains the fact that in NI 8326

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by referring to NI 306) Proc. exhibit 95 book V, (this is a survey on the negotiations with the governmental departments) the name AMEROS is mentioned only once in all the discussions of the years 1933/39 and that in a letter written by AMEROS to Dr. ECKEL, Office for Raw and Industrial Materials Berlin, of 31 December 1936.

It is significant that this letter concerns ^{SITE} ~~station~~ questions "for the Buna II installation" - thus a purely technical question.

(Exh. 95 NI 8326 volume 5)

The final conclusions in the trial brief of the prosecution which as such are already wrong (I/P.35) do, in particular, not apply to AMEROS, because his time was really filled out by his technical tasks and this activity is doubtlessly above any criticism.

Thus AMEROS had neither insight nor any possibility to influence the course of the negotiations

as far as they concern the actual starting of Buna prodg-
tion. He was confronted with the technical task of erecting Buna factories. To him the solving was a mastering of a technical problem. "It was mainly Dr. AMEROS' merit" (GA-Dec.108 Exh. 41 volume I A page 24) that it was possible to transplant the acethlene chemistry to practical chemistry.

AMEROS, in a lecture in June 1937 stated the following on this subject: The chemist sees his task of the synthesis of rubber from a wider angle. He does not want merely to produce "natural rubber" and win the battle of prices under the protection of national guarantee, but he tries

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consciously and by working of theoretical ideas on the structure of the substance to invent various kinds of Buna with specific qualities. (OA-Doc. 301 ~~Exh.~~ 301-Exh. 51, volume II A page 1)

Buna is thus "not actually" to be regarded as "substitute for rubber", but as a new material superior to rubber in many respects. (NI 6194 Exh. 97 volume 5, English page 56)

"The economic aspect of the synthesis of rubber becomes promising if high quality products can be produced." (for MEER Doc. 171 Exh. 111) Therefore it was technically attempted to improve the various kinds of Buna in order "to secure additional possibilities of application" (NI 11106 Exh. 1571 volume 28)

These motives were dictated only points of view of private economy and their aim was to enlarge the circle of customers. Thus STRUSS justly stated in his lecture on the "great tasks of chemical industry within the frame of the Four Year Plan ..." of 30 May 1938:

|| The price for synthetic rubber is at the moment much higher than that of plantation rubber. In due time, however, it will be possible to lower the difference in prices considerably and without doubt the result of that will be that the consumer will fare much better with synthetic rubber than with natural rubber in spite of the slightly higher prices of synthetic rubber, because the latter has more favorable qualities. With these products we will be able to win over foreign customers and that

a) by export

b) by license (NI 8327 Exh. 96 volume 5 English page 27) ||

3.) The transplanting from the laboratory resp. technical stage to practical technology was carried out under strong pressure exerted by the State. AMBROS endeavored to slow down the precipitated development.

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When matters were still at the stage of experiments, the "Plani-
potentiary for economic Questions" KEPLER writes on 12 November
1935 (NI 4713 Exh. 546 volume 28 page 6 English page 5.) "the
Fuhrer is highly interested in speeding up the construction of the
Buna installation as much as possible", just like, on 19
September 1935 at the Reich Chancellery, he considers the
accelerated construction of a large installation as necessary (Ger-
man page 11, English page 8...)

AMEROS opposes the precipitated development, because he was
afraid of technical set-backs; when Buna production was started,
the synthesis process was not yet technically completed to such
an extent that it was possible to carry out the transplantation
to production on a large scale demanded by the Reich Offices. In
1936, the I.G., on the occasion of a conference at the Raw-
Material and Foreign Currency Staff pointed out that "all projects
planned so far were based on the results gained in experimental
installations and these experiments were carried out not only
in three different plants but also in the individual plants in
various workshops. The danger, to pass from these temporary results
immediately over to planning on a large scale... is extremely great,
and could hardly be justified.

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Therefore it was originally intended to carry out the 200 tons per month project and from the experiences gained to plan an expansion to 2000 tons per month

In this connection AMBROS, after the start of the 300 tons per month installation at Schkopau demanded, "from this date onwards an experimental period of at least three months as indispensable" (ter MEER-Doc. 197 Exh. 137 volume 5 page 1/2)

This corresponds with the statements given by AMBROS himself (transcript German page 7863, English page 7791) according to which "the first Buna factory was to be erected at a time when we had not yet completed the technical processes At that time, however, the government expressed the request to start Buna production on a technical scale and that by order of the Supreme Reich Leadership and at a time which seemed too early to us."

On 16 June 1936, however, the Raw-Material and Foreign Current Staff attached to Ministerpräsident Generaloberst GOERING decided the following: "In spite of the fact that improvements are to be expected in the course of the development, as for instance the going over from the four step to the two step process, these possibilities cannot at present, delay an expansion to 1000 tons per month in view to the urgency of the procurement." (NI 7625 Exh. 549 volume 28 page 65 English page 47) In a memorandum of the work committee of the TEA of 16 December 1937 this condition of constraint is being confirmed:

In Autumn 1934 we were asked for the first time to plan a new factory with a capacity of 1000 tons per month by the then Plenipotentiary of the Fuehrer and Reich Chancellor for Economic Questions, Herr KEZPLER. At that time we refused to plan a factory with this capacity, but stated that we were

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ready to erect a factory with a capacity of 200 tons per month "However, Herr KEPPLER carried on his endeavors to promote the construction of an installation on a large scale with a capacity of 1000 tons per month. We had stated that we were ready to plan the installation in Schkopau in such a way it could be expanded and we declared that this expansion depended on certain technical experiments, especially on the technical production of Butadien with a new type of furnace." (NI 882 Exh. 580 ^{we} 28 German 69 English Page 49)

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The governmental departments, however, showed but little understanding for the reserved attitude of the I.G. If one looks back, this can be explained today with Hitler's demand in his memorandum on the tasks of the Four Year Plan 1936 (Para. IV page 17 c. to Buna problem VI 4955, Exh. 411 volume 19 German page 93 English. 43.)

"It is clear that the mass production of synthetic rubber has to be organized and secured.

The assertions that the processes have not yet been completed and similar excuses have to stop from now on." The telephone call of Dr. LOCKHILL of 7 December 1936 to Dr. STRUSS refers to this decision; according to this call, Lt. Colonel LOEB of the Four Year Plan sent word to the I.G. in December 1936 that "in the highest places (apparently the Fuehrer himself) one is after all of the opinion that the secured Buna plant with a capacity of 1000 tons per month must be established immediately. Besides this it must be endeavored to have the first plant ready at the time agreed on" (Doc. ter MEER 199 page 8 Exh. 179 volume 9 III. Expansion of the Buna Production.

1.) The extent of the expansion of production was not decided on by the I.G., but by the Supreme Reich Authority.

In an economic constitution, which on account of the special economic situation of Germany turned more and more to a planned economy, the question of meeting the requirements was no longer decided on by the free market and by the initiative of individual entrepreneurs, but by the governmental directing offices (cf. ter MEER volumes for the regulations of economy in the Third Reich).

The requirements and in particular the meeting of the requirement in kind and quantity was established by the authorities in accordance with priority and capacity.

This fact only explains the differences which for instance arose between the War Ministry and the Ministry of Economy with regard to the necessity of expanding the Buna program (cf. NI 4713 Exh. 545 volume 28 English page 5). Document ter MEER 227 Exh. 167, Doc. 174 Exh.

17 shows these conditions in the correct light.

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As a matter of fact the quantity of rubber required directly by the Army played a decisive part in connection with the expansion of the Buna program.

Lt. Colonel PHILLIPS from the Army Armament Office (WA Pruef 9) stated expressly that the peace-time requirement of the Wehrmacht had been overestimated. "It amounted to only a part of 200 tons per month (about 50 tons per month)" (Exh. 546 NI 4713 a.s.O.) WA Pruef 6 also "denied" that the pressure for the immediate construction of the rubber factories was exerted by the Wehrmacht (Exh. 546).

This confirms the interpretation that the Buna program was by no means directed by military considerations.

(Exh. 552 NI 4636 volume English page 92) is therefore wrongly interpreted in trial brief I, page 36. The initiative rested with the Office for German Raw and Industrial Materials, which itself accepted the "responsibility" for the fact that within the shortest time the dependence of our Fatherland from foreign raw materials could be eliminated in those fields where this was possible in accordance with the prevailing situation" (Exh. 553 NI 6639 page 126 and for English page 94 volume 23). "The questions of economizing foreign exchange takes first place and is especially urgent in the case of rubber, since foreign exchange in cash is needed for this. At the same time the continuation of the government's motor vehicle program and the continued employment of the automobile industry and its sub-contractors is dependant on the procurement of the necessary quantities of rubber. Consequently, the speedy erection of Schkopau and a second factory will be placed at the head of the entire Four Year Plan as an urgent minimum requirement." (for MEER 237 Exh. 517). This difference in the opinion of the individual offices was, however, settled in the background, without the I.G. being able to interfere. (Exh. 554 NI 8833 volume 28 English page 100). It received the order to plan and erect a second and a third Buna factory from the Reich authorities and it could not turn this order down. (for MEER Doc. 199 Exh. 139 page 8 and for MEER 205 Exh. 145 page 19) AMBROS was "informed" of these decisions only as "fait accompli". (for MEER Doc. 199 Exh. 139 and for MEER 205 a.s.O.)

The increase of production capacity had to be achieved at the request of the Reich in spite of the IG's misgivings. (Exhibit: HI 9479, Exh. 548, vol. 28, engl. page ⁴² 65).

SCHLEPAU, T. MEER 212 Exh. 152.

2.) The IG attempts to delay the speed of expansion for various reasons.

a) The IG did not approve of the precipitate expansion of production capacities, if for no other, then for technical reasons.

A memorandum to the files of the Reich Agency for Economic Expansion dated 14 April 1939 contains the following note concerning Schlepau: "In view of the fact that the Boppe Process has only been tried out on a relatively small scale up to now, and that intermediate stages will have to be tested at first, the IG considers that by maintaining this proposition (i.e. to carry out a further expansion of Schlepau in accordance with the Boppe process) one would incur to great a risk at the moment, always assuming that the expansion terms which have been set to the IG would have to be adhered to." (I 11106, Exh. 1371, vol. 38, page 2 engl. page 11106).

IDENTIFICATION

b) Misgivings for reasons of profitability which were voiced by the IG were also pushed aside by official agencies. Opinions as that voiced by Goh-tarst HEGGER who looked upon the "development of synthetic rubber mainly from the economic side and took the point of view that we must restrain those circles which propose to ignore entirely considerations of price calculations and bad investments" were isolated. (see Meer document 194, Exh. 34, vol. 4, page 80). When the IG stated in a letter addressed to the chief of the Economic Group Vehicle Industry, dated 5 April 1937, that it was "inadvisable at the moment to discuss the second Buna plant, that, above all, the question of building costs and profitability of the second plant could not yet be gauged, and that the conclusion of the agreement concerning the first plant constituted a basic pre-requisite for the institution of further negotiations concerning the second plant", the Agent for the Four Year Plan, Office for German Raw and Industrial Materials, in his letter of 23 April 1937 addressed to the IG,

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"did not admit a basic connection between Buna I and Buna II" and therefore demanded that "the necessary preliminary negotiations should be taken up immediately so that no further time should be lost in connection with the Buna II object." (Doc. ter Meer 214, Exh. 154, vol. 5, page 39). In a further letter this agency confirms that on their side the "greatest importance is attached to the start of construction work for the II. Buna plant as soon as possible". (ter Meer 215, Exh. 155, vol. 5, page 41).

c) It was also during the year 1937 that "complaints were lodged by the Buna Werke GmbH on account of unsatisfactory and delayed deliveries of the required quantities of iron and other materials" (AI 7241, Exh. 547, vol. 28, page 43, engl. page 21)

As early as 1936 AACHOS discusses the fact that the obstructions caused by "unsatisfactory deliveries and allocation of materials, as well as by other difficulties of supply, constituted a serious reason for the delay of the Buna expansion". (Doc. ter Meer 197, Exh. 137, page 2).

The fact that this attitude of AACHOS was justified is confirmed by the final report of the office for Raw and Industrial Materials dated 30 October 1937 (AI 8950, Exh. 130, vol. 5 - o. 1 engl. page 171).

d) The IG also drew attention to the lack of leading experts needed for the expansion of the Buna works, stating that "as regards this as well as the other labor there are very serious difficulties the mastering of which will at least require the same attention as those arising from material supply". (ter Meer 197, Exh. 137, vol. 5, page 3, doc. 226, Exh. 167, page 3., AI 11106, Exh. 1/571, vol. 28).

AACHOS voices these misgivings again and again and tries to resist the "term plans" of the Reich agencies: "in view of the fact that our designing offices are extremely busy and that, above all, technical experts for the building site, assembly, and starting up of production, are lacking, the construction of Fuerstenberg, intended as the III Buna plant, can only be started in autumn 1939 at the earliest" (AI 13515 Exh. 1895).

One could not express one's negative attitude more clearly in the Germany of 1938.

3.) Neither could the IG assert their point of view in other purely technical matters on account of the pressure of the Reich agencies.

a) "Seen from the view point of Buna the 'Four-Stage method' is regarded as a useless investment".

(Dec. ter Meer 197, exh. 137, vol. 5, page 4). Therefore, the IG planned to erect further plants in accordance with the two-stage method (ter Meer 197, exh. 137). But the office for German Raw and Industrial Materials issued instructions that the four-stage method should be applied without consideration of "useless investments which might be caused thereby under given circumstances" (ter Meer 205, ex. 135, vol. 5, page 20). Thus, against the suggestions of the IG, the four-stage method was ordered for the II. Buna work, instead of the two-stage method. (ter Meer Dec. 200, exh. 140, vol. 5, page 9).

It is true that the adoption of the two-stage method would have caused a considerable delay of the Buna expansion for "even from the most optimistic point of view a decision concerning the application of the Hays process would have only been possible at the beginning of 1940 at the earliest". (Memorandum to the files by AMEROS dated 7th July 1938, RI 135/15 Exh. 1896).

AMEROS could only "make a suggestion in his capacity of technical expert", i.e. he could examine whether the site was suitable from a technical building point of view and adequate for the requirements of chemical industry.

Subsequently he made his report to the Reich Office for Economic Expansion or to the Gasechem. But even the latter could not decide in this case for there existed within the framework of the Four Year Plan represented by GOMING, an official Group Planning, Space Planning. This group was superior to all other agencies (German transcript page 7890/91, Engl. Page 7817). In most cases the IG's suggestions for sites were not even successful (cf. ter Meer 197, Exh. 137, vol. 5, page 4).

- 4.) If the IG had refused this would have not changed the situation.
They were in a quandary.

Quite apart from the legal means of pressure which were at the disposal of the state for compelling all enterprises coming within the sphere of the Four Year Plan to start production by threats of punishment; ~~(as....)~~ the definite refusal of the IG to expand the Buna production capacities on the requested scale would have had even other consequences:

When the IG did not declare itself prepared to build a third Buna plant (Turetschberg) the official agencies decided categorically: "The plants will be borne by the motor industry while the IG would have the management". (Letter addressed to Herr Weer by the Office for Raw and Industrial Materials, dated 5th January 1937, see Weer Document 208, Lxh. 145, vol. 5). It was even stated that "if no agreement were reached with Herr K. Priess (Raw Material Staff), the Minister (von Bismarck, War Ministry) would build his own plant". (SI 4713, Lxh. 546, vol. 28, German page 13, Engl. page 5).

Therefore, the IG had to try to adapt itself to the constant "pressure exerted by State Agencies for a steady increase of the Buna production". (Ga doc. 231, Lxh. 208, vol. 0, a report on a conference of 2nd December 1938), if it did not want to lose the results of its experiences and its processes in the Buna field, which had been acquired at great cost and by incredible facts of work and intelligence. There was nothing left to AMROS but to state, for instance, that he considered it unwarrantable to start the construction of the third plant before 1941" (Ga 231, Lxh. 208, vol. 0, a.s.O.)

If the IG finally gave in "to political reasons" which were put forward by the "Reich Agency" in order to compel the IG to adhere to the expansion terms laid down in 1939, (SI 11106, Lxh. 1571), this wording of a memorandum to the files of the Reich Agency for Economic Expansion does not, at any rate, permit any deductions concerning the alleged preparation of an aggressive war and the IG's co-operation therein, in contrast to what is stated in the Trial Brief (Page 35a). The true attitude of the IG hides itself behind the strong emphasis on practical difficulties which is expressed in the subsequent text: (Lxh. 1571 loc. cit.)

IV. The starting up of production of synthetic rubber and its extent, is not regarded by the private industry as a preparation of an aggressive war.

1.) The production of Buna in Germany is a matter of supply of vital raw materials in the first instance, not a measure taken for purposes of armament.

The IG, and A4808 in particular, had no cause to regard the expansion of Buna production capacities as a measure of the third Reich directed towards the preparation of war.

a) In the thirties Germany's situation within the world economy compelled her (see above) to regard Germany's rubber supply as a problem of foreign exchange. How great was the importance of rubber in this respect can be gathered from the fact that "the German tire industries in 1937 spent up to 181 million RM for raw materials and half-finished goods. In the same year 2 1/2 million tires for private cars, approximately one million tires for motor bicycles, and 1 1/2 million tires for trucks and delivery vans were manufactured (for Meer Dec. 224, art. 164, vol. 5).

The actual lack of foreign exchange would have thus led to a far-reaching collapse of the motor car industry, and that again would have meant that during the years of crisis one would have had to renounce "an important factor for the revival & stabilisation of economy", (for Meer Dec. 171, art. 111, page 2) i.e. that the unemployment problem would have become inspluble. Later on the development of the motorcar industry based on an assured supply of rubber became a question of living standard. The lack of foreign exchange had an equally fatal effect on the living standard within the leather industry.

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The foreign exchange requirements amounted to 220 million marks (18 000 tons per year of raw Buna) (see Meier doc. 180, exh. 120). Only this acute danger of the war was able to induce the State authorities to release a few million Reichsmarks' worth of foreign exchange for the acquisition of raw rubber to satisfy the Wehrmacht requirements, which it was impossible to satisfy by June. (II 6194 exh. 87, vol. 5, Engl. page 56). In view of this special situation in Germany A-2805 thought it understandable if the Reich Office for Economic Expansion motivated its pressure by saying that "the foreign exchange situation was very critical". (Da doc. 221, exh. 200).

b) In view of the lack of foreign exchange, which Germany took for granted, the safeguarding of the rubber supply for her economy by means of starting-up and expanding the production of synthetic rubber on the basis of raw materials, such as coal and lime, which already existed in Germany, could not be considered from the point of view of profitability. (transcript German page 7360, English 7794).

It is therefore unnecessary to deduce "military purposes" from an alleged "extraordinary and uneconomic" expansion of the Buna production capacities, as the prosecution attempts to do in Trial Brief 36a, referring to the testimony of the witness A-145, (transcript German page 1353, English page 1380).

The IG did carry out the organization of the Buna plants in accordance with considerations of profitability. (cf. transcript German page 7865, English page 7794 and II 7-24 exh. 556, vol. 20, page 187, English page 118).

The IG's striving for Profitableness is shown by the price calculation of Buna which is definitely based on economic considerations of market requirements, i.e. peacetime requirements. Though the fall in the price of natural rubber from RM 2.— per kg to 40 Pfennige per kg made it seem hopeless at first to go on with the development of plans for rubber production, the laboratory work was carried on by the IG, as there was a hope of increasing the life of, say a tire by 50%, and thereby enabling the synthetic product to compete with the natural rubber as far as price was concerned as "it is well known that the quantity of rubber used in a tire only represents a small part of the price of the tire". A further important point was the fact that there were signs of the new product being superior to the natural rubber tires as far as the protection against skidding was concerned". (MI 6930 Ldn. No. 545, vol. 28, page 4, Engl. page 1). It was only because they expected that "the higher costs would be equalized by better quality" that the IG took up the production of rubber. In addition the actual improvement of the Buna process enabled the IG in the course of the years to lower the Buna price of RM 4.—, which it still was in 1937, to RM 2.30. (for Meer doc. 185, exh. no. 18, vol. 4, Garaua page 45, MI 7972, exh. 570, vol. 29, page 114, English page 55, MI 9479 exh. no. 548, vol. 28, Garaua page 57, English page 42).

These efforts and successes are explained by the IG's endeavours to place a synthetic product on the market which was able to stand up to competition. If there had only been a military interest in Buna, or if this interest had even been the dominant factor, these efforts would have been unnecessary, and the IG would have been able to follow a different and monopolistic price policy.

The "policy of coupled economy" (Verbundwirtschaft) which the IG strived for, points in the same direction. This policy was, for instance, the decisive factor for the foundation of the Schkopau plant, in order to secure an economic basis for the Buna production on a favorably located site (para. 6 of the agreement relating to Schkopau dated September 1937). (WI 882, ex. No. 550, vol. 28, German page 71, and 87; English page 49 ff.) The policy of coupled economy was chosen as "it was inevitable from the start that the organization had to be on a rather exaggerated scale on account of the general technical requirements". The IG's desire to "calculate the Buna price as low as possible thus led to the only possible way of creating a coupled economy between Buna plants and other manufacturing plants. It was not the idea of facilitating the creation of further manufacturing plants affiliated to the Buna plant, which was the decisive factor for us (the IG), but our desire to relieve the Buna plant of the exaggerated investments which were inevitable under the given circumstances". ("Basic points of view" for the foundation of the Schkopau plant and the Buna agreement of the 17 February 1937 WI 7424 ex. No. 556, vol. 23, German page 188, English page 118).

Secondly one was justified in taking the entire actual peacetime demand as a basis for the intended scale of the Buna production, as this demand could not be satisfied by imports of natural rubber. The purpose of building up the Buna production capacities was thus only to transfer the actual peacetime demand for rubber from natural rubber to Buna. The diagram No. 12 attached to WI 7622 ex. 555, vol. 28 gives an impressive survey. According to the status of February 1938 the demand for rubber amounting to 100 000 tons per year, was satisfied by natural rubber to an amount of 96,000 tons. It was intended, however, that as early as 1940 this should be decreased to half of the demand, i.e. to 50 000 tons of the 120 000 tons per year required, and in 1943 it was intended that the demand for natural rubber should be exclusively satisfied by Buna.

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- 2.) The actual peace-time demand was not exceeded by the expansion of the Buna capacities.

The question as to whether the Buna production can be in any way connected with the preparation of a war may be examined simply by considering the figures showing the consumption of rubber, or synthetic rubber, in Germany during peace-time.

- a) The most reliable indication is supplied by the figures showing the actual rubber consumption in Germany

*According to the production data compiled by the National Statistical Bureau, the following are the figures on raw materials used for the manufacture of tires, rubber shoes and other rubber goods in 1935 - 1938:

	1935	1936	1937	1938
	tons	tons	tons	tons
Natural - and synthetic rubber including latex (dry substance) balata and gutta percha, including Fordron and Thiokol	64 951	67 231	83 831	95 516
as well as reclaim, including soft rubber flour and hard rubber dust	19 281	26 713	36 141	36 988
	84 242	93 944	119 972	132 504

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In this connection it must be noted that the actual consumption in Germany did not even reach the calculated demand. Thus, WGLMB of the Reich Office for Economic Expansion calculated the actual requirements for 1938, including reclaimed amounts at 150 000 tons; in contrast to this the actual consumption only amounted to about 103 000 tons (GA doc. 221 Dzh. 208 from 2 December 1938 conference Seikopov).

- b) The total rubber consumption is spread over the various consumer groups in a way which is shown by the diagram No. 10 attached to HI 7522 ext. No. 555, vol. 28, English page 108.

According to this by far the largest ^{part} i.e. 83 187 tons, or 53.4%, was used for tires, and the second largest part amounting to 11 700 tons, that is 4% went to the making of soles and heels; 2.6% was used for manufacturing 11 930 399 pairs of rubber boots.

"Diagram No. 11 shows that the preliminary aim was to satisfy the demand to such an extent that, while in 1936 the raw materials of the rubber industry were imported goods up to 100% the amount of materials paid for in foreign exchange should be considerably decreased in spite of the fact that the total production of rubber goods was being increased by 70%.

c) This planning was based on an estimate of the rubber demand which the Reich Agency for economic expansion had drawn up and which read as follows:

<u>1939</u>	110 - 120,000 tons
<u>1940</u>	120 - 130,000 tons
<u>1941</u>	130,000 tons and
<u>1943</u>	<u>150,000 tons.</u>

(OA doc. 231, exh. 208 n.s.O.)

(DEWEIL at Schkopau on 2nd December 1939, page 2).

Now granted was the annual consumption of Buna in one industry only, i.e. in the part sector of the leather industry, as early as 1939, is shown by a confidential letter addressed by Dr. AMROG to Dr. GELAND and dated 30 June 1939 (for OA doc. 233, ex. No. 272, vol. 14, page 5), in which an expert calculates the consumption of Porbunan and Buna S in the leather industry at 3 to 4 000 tons per year and the demand for Buna S for the manufacture ^{of} leather soles at 8 - 10 000 tons a year, i.e. a total of 11 - 14 000 tons a year.

In contrast to this, the total production, i.e. for all kinds of requirements, only amounted to 5,400 ts per year in 1938, and to 23 000 ts per year in 1939. (Gd 4 Exh. 4)

V.44. The definite increase of rubber consumption in Germany does not justify any deductions concerning a re-armament aiming at a war, but is only an indication of the raised living standard.

One could be led by a superficial survey to deduce military tendencies from the general increase of the total demand for rubber. This, however, would constitute a complete misunderstanding of the world situation at that time.

a) Diagram no. 3 attached to GI 7622 exh. 555. loc. cit. shows very impressively that "rubber is one of the few materials the consumption of which has been increasing almost constantly in spite of several economic world crises. It cannot be assumed that this development will stop within a measurable period of time (status of February 1938).

Germany's share in the world consumption amounted to about 10% in 1937",

According to these statistics the German net imports in 1937 amounted to 100 000 tons per year, the world production to 1,100 000 tons per year, and the world consumption to 1 038 000 tons per year; in contrast to this the German net imports in 1932 amounted to 45 000 tons per year, the world production to 709 000 tons per year, and the world consumption to 690 000 per year; that is to say: the world consumption had also increased by 50% from 1932 to 1937. In spite of the increase in the years following 1939, the rubber consumption in Germany still does not reach by far the consumption figures of other highly industrialized countries.

A proof can be furnished by calculating the rubber consumption per head of population. (cf. diagram No. 3 attached to AI 7622, exn. 553, vol. 28, German page 174, English page 108). According to this the actual consumption in 1936 is only little more than 1 kg, in 1937 it is estimated at 1.4 kg, and even in 1940 it has only increased to 1.8 kg, while in 1938 the rubber consumption in the USA amounted to 4 - 5 kg per head (AI 8327, exn. 96 vol. 5, German page 41, English page 27).

b) All the more did the increase of the demand for rubber in Germany constitute an expression of the desired raising of the living standard.

1.) The main effect of the economic upward impetus in this field was an increased motorization. This was the cause for the extended plantings in the same production.

An activity report of the Reich Agency for Economic Expansion (AI 8833, exn. 554, vol. 28, German page 158, English page 100) confirms explicitly that in view of the newly instituted support given by the Reich Government to motorization, the calculation of the demand for rubber could no longer be based on the key year 1935, in which about 65 000 tons were used, but should be estimated at 100 000 tons per year. In December 1938, MEMO of the Office for Economic Expansion estimates the probable increase in the demand for rubber at about 30%, solely on account of the ratification measures in the motor vehicle industry. (MEMO 2 December 1938, page 1).

A report of the GdE of autumn 1938 (Ger doc. 175, exn. 115, vol. 4, page 23) describes the situation very clearly: "In view of the large - scale motorization instituted by the National Socialist Government, a considerable increase in the demand for rubber had to be expected, . . . for which no foreign exchange would have been available in the long run.

It could no longer be doubted that the motorization program would be successful in view of the building of the Reich-autobahns and the Reich Government's Tax Policy which favored car owners. It is true that Germany had come considerably nearer to the level of the West European countries as far as the number of motorized vehicles per head of the population was concerned, but her motorization had still not reached that of France and England. In view of the gradual raising of the living standard in Germany, and the expectation of the Volkswagen, it had to be definitely assumed that the consumption figures for motorized vehicles per head of the population would soon reach those of the other countries."

Taking all these factors into consideration (see Proof 6) calculated the total consumption of rubber for the year 1941 at about 125 000 tons per year (see Meer Doc. 175, exh. 115, vol. 6, page 24).

The fact that the motorization constituted above all an economic pseudo-time aim is shown very clearly by diagram no. 5 attached to NI 7822 exh. 885." In spite of having reached the definitely highest figure for vehicles on 1st July 1937, Germany still lags behind France and England in this diagram", not to talk about the USA; in 1937 there was in Germany one motorized vehicle for 47 inhabitants, in England one for 21, in France one for 19, and in USA one for 4.5. A supplementary confirmation of this is contained in Meer document 179, exh. 119 which gives a survey of the number of motorized vehicles in the years 1932, 1935, 1938, in USA, Great Britain, Germany. It must be taken into consideration in this connection that it had to be expected that the Volkswagen would cause a considerable increase of rubber consumption" on the German market", which would, however, only take its full effect after the preliminary aim of the Four Year Plan had been reached.

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Partly this increase will result even in the very near future from the necessity of making more use than before of business cars in Germany* (LI 7622 exh. 555 loc. cit.) These demand figures, which must be counted on, are thus not included in the above calculations. A rubber expert has calculated how much would be the additional annual demand for Buna which would result from the intended Volkswagen production. (for Meer doc. 178 exh. 118, vol. 4, page 30). The result of his calculation shows that alone for this purpose 55 - 70 000 tons of Buna per year will be required!

The planning for the Volkswagen production was started at the time and it was meant to satisfy the civilian requirements. (for Meer 175 exh. 116, for Meer 177 exh. 177 and for Meer 226, ex. Bc).

2.) The same tendency towards a raising of the living standard can be seen in the leather industry. "In view of their foreign exchange requirements amounting to roughly 280 million ** per year for the importing of raw skins and furs, substances used for tanning, and, to a smaller degree, lining for leather, the German leather industry was prevented by the raw material situation from producing more than 1,2 pair of shoes per head of population per year in 1936. The shoe supply of 1.2 pairs of shoes per year was far below that required by the living standard of other nations. Thus England, for example produced 2,5, and USA 3,5 pairs of shoes per year per head of the population. After the economic damages done by the post war crisis in 1931 had been overcome, the German leather and shoe industry had to count on an annual consumption of 1,8 pairs, in view of the gradual raising of the living standard.

** (In May 1938 the imports of skins were figured at 280 million RM. LI 8327 exh. 96, vol. 5, German page 36, English page 27).

As the foreign exchange required for this purpose could not be produced by an increase of exports, it was clear to every expert that shoe production could only be increased by the employment of substitute materials..... In order to adjust in 1933 measures the shoe production to the demands of other highly industrialized countries, and to cover the repair requirements, even in the face of rising raw material costs, it was necessary to use 80 - 90 000 tons per annum of raw products in the place of leather..... as far as underleather was concerned the technical position mainly required the production of buna soles and heels..... which would have amounted to a consumption of about 50 000 tons per year. To achieve this it would have been necessary for IG Farben to produce an additional amount of raw buna amounting to approximately 18 000 yearly tons, or at least amounting to 12 - 15 000 tons annually" (ter Meer doc. 180 exh. 120, vol. 4, page 35). These plans are confirmed by a document of the period dated June 1934 (ter Meer doc. 233 exh. 272, vol. 14, page 5).

3.) The share of the military sector in the peace-time rubber consumption of Germany was very small.

It must be noted that the consumption of the military sector played hardly any part at all in this upward impetus. It has already been pointed out that the Wehrmacht itself opposed an over-estimation of its requirements and calculated its own demand only at a fraction of 200 tons per month (SI 4713 exh. 546, vol. 28, German page 3, English page 5).

Actually: "the quantities referred to in the purchasing guarantees which the Reich War Ministry was prepared to give were too low" even as early as 1935 when the production plans were started (SI 4713 exh. 546, vol. 28, English page 5).

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At a conference at the Army Ordnance Office in 1935 the Army requirements were calculated at 150 to 250 tons per month (AI 4713 exh. 546, English page 5). Even in 1936 the placing of the monthly production of 250 tons created difficulties, "as within a measurable period the Reich Agencies will hardly take more than 100 tons off our (the IG's) hands".

It is therefore the IG's "intention TO FOSTER FULL WORKING AT HOME AND ABROAD AS FAR AS POSSIBLE BY MEANS OF PROPAGANDA AND RESEARCH WORK WHICH HAS ALREADY BEEN PLANNED" (for Meer 192 exh. 132, vol. 4, Page 76).

This tendency is obviously directed towards the aim of placing the IG's Buna production on an economic peacetime basis. Even in the times which followed the actual share of the military requirements in the Buna production did not increase to any considerable degree. In that field where Buna was mainly used, i.e. in the tire industry, (see above) the Wehrmacht's share in the rubber consumption only amounted to 15%. The remaining 85% supplied the civilian sector. (AI 6196 exh. 97).

In the second largest field where Buna was used, i.e. in the leather industry, "the Wehrmacht's purchases of leather in 1936 only amounted to roughly 5% of the consumption of the German economy" "The German Wehrmacht Departments not only disagreed with the employment of substitutes, but in some cases also made it more difficult". (for Meer doc. 180 exh. 120, vol. 4, Page 36).

CERTIFICATE OF TRANSLATION

9 June 1948

I, Julia K. R., Civ. No. WFO 20 185, hereby certify that I am
a duly appointed translator for the German and English languages
and that the above is a true and correct translation of the
original document.

Julia K. R.
Civ. No. WFO 20 185.

- 4.) Extension of Buna and plannings at the council board are irrelevant because they could not be realized and had no connection with the planning of the I.G.

The prosecution has submitted plans for the extension of Buna which come from various offices and agencies (Reich Office for Economic Expansion, Reich Economy Ministry, OER etc.) and which partly differ from each other. They have only one thing in common namely they had been planned partly hypothetically at the council board in complete ignorance of the realizable possibilities without contact with, and knowledge of, the Buna experts from the I.G. or even against concrete planning. All these "plans" do not prove anything as far as the collaboration of the I.G. with the Reich in the Buna program is concerned.

At any rate it has to be kept in mind that e.g. even the Buna extension plan of the Reich Office for Economic Expansion (about I MI 8833 exm. 354 vol. 28, page 149, English page 100) sketched merely on paper expects until fall 1941 only a production of 100 000 tons per year, i.e. it lags behind the expected 130 000 tons peace-time demand of rubber for 1941. (See above) The prosecution refers to an affidavit of witness Dr. STRUSS MI 12827 exm. ¹⁸¹¹~~1280~~ vol. 28 who mentions planning by the I.G. before the outbreak of the war of a total of 112 000 tons per year, in order to support its allegation that thus the peace-time demand was to be obviously exceeded by the I.G. too. The prosecution makes here a double mistake. First, these figures would be beneath the peace-time demand, second these figures mentioned by STRUSS are based on wrong calculations. The I.G. pressed by Reich agencies had planned before the outbreak of the war only an extension of the Buna plants I and II, but had been able to drop the Buna project III, Thorstenberg

in spite of the original intentions - cf. above - of the Reich agencies. This fact has been established in a documentary manner in HI 8833 exh. 554, vol. 28:

"In November 1939 on the ground of the development of rubber consumption which had occurred in the meantime the problem of a third Buna factory was discussed again, particularly in connection with the industrialization of the Sudeten area. After a thorough examination of the existing possibilities and considering the fact that supply of iron and manpower had become more and more difficult a decision was made in agreement with the Reich Economy Ministry to execute the planned total extension only in 2 plants Schkopau and Halle up to a production of 100 000 t; Schkopau will have a production of 60 000 t and Halle 40 000 t."

As a matter of fact the Buna factory project Buna III was dropped definitely before the war; actually it has never been started by the I.G.

At the 5th meeting of commission K on 30 January 1941 in Leipzig the following was said in reference to Buna III: "AEROB mentions during the discussion that the Degussa in Buna III/Oder wants to establish a plant on acetylene chemistry basis. Already in 1938 I.G. gave up this locality because of the unfavorable raw material situation. (QA doc. 315, exh. 79, page 10 of original). It is therefore historically false if STUSS in his affidavit exh. 1814 HI 13-37 considers for his calculations cumulatively the extension of Buna I and II with the planning of Buna III. Both these projects were planned as alternatives only. The extension of the Buna plants I and II had been fixed by the Reich Office for Economic Expansion on 4 April 1939 with a total production of 100 000 t Buna. (HI 11105, exh. 1619, vol. 28)

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THIS WAS AT A TIME WHEN ACCORDING TO CALCULATIONS THE REICH OFFICE
 OFFICE THE ACTUAL CONSUMPTION OF AIR AT BERGHEIM 100 000 TONS PER YEAR,
 THE ACTUAL DEMAND WAS ABOUT 115 000 TONS PER YEAR AND THE BLOCKED
 DEMAND WAS BETWEEN 110 000 AND 120 000 TONS PER YEAR.

But it was AMEOS who using material arguments opposed the pressure
 of the Reich Office "to obtain an accelerated increase of production".

"According to RECHL (Reich Office for Economic Expansion) the
 increase of Buna production to 150 000 tons per year in 1943 will be
 requested in the near future. AMEOS, however, considered (December
 1938) the following expansion possibilities of the Buna plants:

	<u>Sakkeben</u>	<u>Buels</u>
March 1940	40 000	16 000
May 1941	60 000	30 000
September 1941	60 000	40 000
	<u>1.0 000</u>	

AMEOS does not think it feasible to start construction of a third
 plant before the beginning of 1941 (CA - exn. 208).

II-44. The actual production capacities and production figures.

The most reliable criterion for the fact that Buna was not
 supposed and could not serve an aggressive war are the actually
 existing production capacities and production figures.

- 1.) The actual Buna production was always only a fraction of the peace-time demand.

A chart, GA doc. 4, gives an obvious information about the development of the German Buna production according to the state on 1. November 1944 (cf. record German page 7852, English page 7790). The chart is supplemented by War Dec. 124, exh. 124, vol. 4). According to these documents the actual Buna production in 1939 the year the war broke out, was only 22 420 tons per year. The production of Buna II in Sude was not started until September 1940 with 550 tons per month and the production at Buna III in Ludwigshafen not until February 1943 with 85 tons per month (War Dec. 124 exh. 124, page 44).

In comparison with existing consumption figures for 1938 e.g. with 133 498 tons per year (see above) these production figures at the beginning of the war ^{were} only a fraction. The actual production figures are shown in detail in other documents. E.g. the monthly production of Schkopau July-September 1939 in War Dec. document 213 exh. 153, vol. 5, page 38, or the total Buna production for 1934/35 in AI 8533 exh. 554.

- 2.) The existing production possibilities lagged far behind the necessary demand during the war.

The production possibilities not only lagged behind the peace-time demand but also by far did not reach the necessary demand in case of war. Competent Wehrmacht agencies calculated this war demand even at 100 000 t.

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Not even in planning was it attempted to reach this purely General staff calculation. At any rate it is a fact that "the supply could not meet the demand." (AI 6194 exh. 97, vol. I, page 56).

At the outbreak of the war on 3 September 1939 "stocks and production at the same rate of manufacture would be sufficient for about two months". Contrary to the prosecution's interpretation the supply situation at the outbreak of the war was therefore not favorable but on the contrary critical bottlenecks occurred, which "made energetic measures compulsory" (AI 6194 exh. 97, vol. I).

The situation could only be mastered to a certain extent by reducing consumption i.e. by a sharp restriction of the peace-time demand.

In the first place the rubber situation made necessary "a strict saving since the imports lagged behind the expectations and the production of Germany, too, was considerably smaller than expected". (AI 6194, exh. 97, vol. I, page 56).

The only reasons why the rubber shortage did not become directly catastrophic was that at the same time the gasoline shortage brought forth a sharp restriction of automobile traffic at the expense of peace-time conditions and of a more extensive motorization of the Wehrmacht necessary for modern warfare. Measures taken after the outbreak of the war show that a system of makeshifts supposed to bridge the lacking preparation for the war until the war planning was made adequate to the necessities of a modern war.

In 1941 the rubber supply situation became so difficult that "40 million RM in foreign exchange was made available for additional purchase of natural rubber and tires" and at the same time a so called "saving commission" had to be appointed. (exh. 97 of I 6194 vol. V). "At the meetings of the saving commission those who had quotas were told to expect considerably diminished quotas." (exh. 97). Another proof that the capacity of Buna production in case of a war was not nearly sufficient even in 1941.

- 3.) The military importance of synthetic rubber as such does not allow conclusions as to the preparation of an aggressive war. This is a problem of independence from raw materials.

The prosecution obviously deemed it important to have witnesses claim "without I.G. Buna it would have been impossible to wage the war" (ST-35 I 3318 exh. 54.2) But this is the same kind of commonplace as the allegation: "Without rubber no modern war can be waged." Or without agricultural products, or gasoline etc. It is not even a problem of proportion in importance.

The military importance of rubber is a result of its nature.

Criminally relevant can be only the intent with which one wants to use it. The solution of the problem: How a nation secures its rubber supply is not circumstantial evidence of preparation of a war. It depends on the particular economic structure of the respective country and is in all nations the result of an endeavor to be as much as possible independent as to raw materials, especially as to rubber. Thus at a time England strived under the greatest difficulties "to get cautious seeds in order to be able to build up a rubber supply".

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(SI 7522 exh. 555, vol. 28, page 106). And thus even the United States attempted production of synthetic rubber in order to be independent as to rubber supply in case of a war. (See Hear dec. 230, vol. 5). It is simply paradoxical when the prosecution accuses the I.G. on the one hand of having started Buna production and on the other of allegedly having withheld from the U.S. its technical experiences in this field. Besides AMEROS was not familiar with these negotiations. He does not even know Mr. EDARD who was at the negotiations the partner on behalf of Standard Oil (Hear dec. page 7806, English page 7770). Defendant Mr. EDARD who was in this respect in charge of relations with the U.S. has clarified this problem sufficiently.

The effort to become independent as to rubber supply via Buna is therefore a. The G. and a. PLANNED ECONOMIC PROBLEMS BY TO LET EDARD AND G. SEE ONE WAY A CONTRIBUTION FOR A PEACEFUL SOLUTION OF A WORLD ECONOMIC CRISIS OF SUPPLY.

In a document of the prosecution this is even expressed as follows: "It appeared that the danger of war involved in any raw material monopoly could not be eliminated. Chemists, however, did away with it. Science broke the rubber monopoly of the tropics as it had been able to replace the monopoly of the indigo plant, the silk monopoly, the cotton monopoly, like it had replaced Chile nitrate of soda by atmospheric nitrogen" (SI 5237 exh. 539, vol. 27 page 129).

It is significant that in Germany the program of Buna production was presented in public at the International Automobile Exhibition 1937 namely as having the aim: "to make the German automotive economy independent from the uncertainty of international imports and to put it on a solid, safe own basis and to give thus countless German nationals a secure existence". (AI 5527 exn. 531, vol. 27).

- 4.) A-2805 especially looked upon his cooperation in supplying Germany with synthetic rubber as a task of a purely peacetime economy nature.

Before starting his activities in the Buna field A-2805 stressed the point time and again that the synthetic process of Buna should be a contribution to satisfy civilian demands and thus to raise the standard of life and technical progress. In a public lecture in summer 1937 he said among things: "The motor car industry, in particular, which in Germany and America accounts for about 60 to 70% of the rubber consumption, came to be dependant on it and its whole development. The new Germany, which considers motorization a decisive factor for economic revival, must be independent in its actions. (AI doc. 201, exn. 51, vol IIIA, page 1).

Another conception would have been for him as a chemist absolutely strange. Therefore he had "no doubts" as to the peacetime intentions of the government. "Why should we not succeed to replace the natural product rubber like we replaced once indigo or the Chile nitrate" (Page of record German 7203, English 778).

He said words to the same effect in May 1939 (cf. ter Meer 225, exh. 145, vol. 5, page 56). This attitude devoted to scientific research and the welfare of mankind corresponds also with the traditions of the I.G. any military considerations were absolutely foreign to him.

a) The I.G. particularly tried always to emphasize the private economic nature of Buna in view of the military interest in it, and represented the opinion that "artificial rubber could be used for peaceful purposes for reasons of foreign exchange and that therefore we have to participate in the meeting at Dr. Kappeler's Raw material and Foreign exchange staff (AI 4713 exh. 546).

At the Office for Raw- and Synthetic materials military aspects were never discussed (ter Meer 189). The I.G. always could keep "its position of a private economic enterprise" in relation to the Reich by avoiding any partnerships.

Just because the I.G. "wanted to keep strictly to the principle of private economy" the agreement with Reich agencies concerning construction of the Buna plants was often very ^{hard} to be reached". (ter Meer 190, exh. 130, vol. 4, page 69). Thus during a conference in October 1935 at the Raw material and Foreign exchange staff about the construction of the plant Schkopau the I.G. explicitly emphasized that consequently Schkopau will not have the character of a Reich plant, but will always have to retain that of ^aprivate industrial plant.

(ter Meer doc. 197, exh. 137, vol. 5).

Also in the case of Buna plant II Huls it was the aim of the I.G. "to put Huls on a definitely private economic basis and to renounce as much as possible guarantees of the Reich." (AI 7769, exh. 559, vol. 38, page ¹³⁵ 210). The I.G. did not even let

influence itself by military considerations when choosing a location. The Buna plant, Buna was established shortly before the war only 22 miles from the Western border (see Wehr doc. 229, exh. 169, vol. 5, page 71).

b) How slightly the I.G. valued the Buna production from the military point of view is shown particularly by the fact that there was no secrecy whatsoever as to the extent of Buna production, planning of capacities or even the process itself. AMROS particularly did not think of making a secret of the Buna production method. (record German page 7304), English page 7768). He gave repeatedly in public an "insight into the chemistry and technicalities ^{of} production of artificial rubber according to the German Buna process" and even in May 1936 spoke quite openly to the press about ^{the} fact that another Buna plant was being constructed (beside the Schkopau plant just visited by the press). (see Wehr 225, exh. 165, vol. 5). Such sight-seeing tours were also made by representatives of the foreign press. According to the situation the I.G. considered a secrecy about Buna plants as something definitely absurd. (see Wehr 197).

On the contrary negotiations and work of the I.G. covered countries, too, (cf. record page 7305, English page 7769, Italy - GA document 111 and 112, France - Mann exh. 226, doc. 558, USA cf. volumes of documents see Wehr). Also today the I.G. can without fear submit its work in the Buna field to the world opinion. The I.G. and all its collaborators have the right to be proud of the great scientific and technical performance of the synthetic process of Buna. Like it was prepared to put the Buna synthesis in the usual way at the disposal of all European countries.

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and to construct plants, the I.G. was also prepared in fall 1939, AGROB in particular, to go to the U.S. to Standard Oil in order to establish there the Buna - S - process. Now then, did the I.G. develop its Buna synthesis since 1928 in order to prepare for HITLER an aggressive war? There is no evidence for that.

TRIAL BRIEF:

C Preliminary products for powder and explosives.

A. GENERAL DATA.

Through the development of the synthetic process of Buna from 1903 - 1934 and its transfer into technical factory production can be clearly understood even by a layman, there is no such a complete picture of the much ramified sector of the production of preliminary or intermediate products which are the basis of the broad modern organic chemistry.

I. Preliminary products as such are neutral.

The prosecution has used this fact in so far as it has not clearly separated the field of preliminary - and final products and has disregarded completely the importance of the intermediate product chemistry for peace-time economy. But particularly in this respect the "neutral character" of the preliminary products is of the utmost importance for the question to what extent the individual preliminary products are important for the armament economy at all.

1.) The consumer not the producer decides about the purpose for which the preliminary product is to be used.

Like in the case of Buna the use of chemical preliminary products is not inherent in them as an exclusive object of their purpose but it is decided from the outside namely by the consumer. This may be a civilian consumer as well as a military customer. The Buna, too, goes first into production fit for consumption, e.g. the tire industry. Tires, though may be used in war and in peace-time, they can be mounted on private cars as well as on military vehicles.

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This basic idea is particularly true as regards intermediate-product chemistry. This is also the sense of the idea expressed by the Defendant KATUB in "a top secret" letter dated 22 July 1933 where he writes:

"Powder, explosives and chemical warfare agents are as far as the consumer is concerned exclusively 'airmacht' supplies. As far as the producer is concerned, however, they are an undetachable part of productions of the chemical industry strongly interwoven among themselves by processes."

(MI 8840, pres. exn. 448, vol. 21, German page 48, English page 12) *)

2.) The State fixes the amount and kind of production.

In Germany the situation of the producer changed owing to the economic planning tendencies of the Reich. The state gave commissions which the industry could not refuse since they were imposed orders. We shall go into these matters later on. An example may be picked out already

MI 7428, exn. 217, vol. 8, German page 80, English page 57, which shows in what a form and how such state directed commissions were handled (Orders, construction survey, key figures, supervision agencies, superior construction staffs, supervision of dead-lines etc.) To put it in a nutshell: "The decision about further use of preliminary products belonged to the GHE."

Record German page 8021, English page 7910).

*) AMEROS himself by the way, never saw this letter as it was "top secret"!

When later on during the third year of war the directing of armament problems was transferred from the OKH to the Speer Ministry, office for raw materials and planning, the economy was directed by the Korstat, i.e. production orders. They replaced the automatic functioning of normal competitive economy.

(Record German page 8024, English page 7913).

Confer in this matter also

VI 7494, exh. 444, vol. 21, German page 1, English page 1 and the testimony of LAFB

Record German page 11 597, English page 11 460.

3.) The general connection of the preliminary product chemistry has to be noticed in order to judge correctly the military and peace economy possibilities of their use.

A distorted picture of the actual situation in the field of the chemical preliminary products ^{results} if the prosecution takes as a starting point a document

6259
SI 6889, exh. 591, vol. 35, Germ.p. 117, Engl.p. 68

(a schematic chart of the Reich Office for Economic Expansion) in which the sector of purely military use of chemicals is cut out and is treated as an isolated problem.

(Record German page 1048, English page 1093 and German page 1135, English page 1151).

If the interweaving of raw materials of the powder, explosive, synthetic and preliminary products production is shown in a picture which is concerned only with these military final products then it has to be objected that chemistry could make many charts with the basis of the same raw materials which would lead to synthetic products, synthetic fibre

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(Nylon), pharmaceuticals etc.

For this reason the defense has submitted

QA - document No. 1 (Benzol tree) and

QA - document No. 2 (Acetylene tree) Ambrose doc. book VI A
page 1 and 2

in order to show the general connection of the preliminary product chemistry referred to by the prosecution in the case of AMEROS.

(more details in enclosed chart to QA doc. 614,
exh. 149, doc. book VI A, page 37).

Only this general view can show the importance of this chemical part-domain of the preliminary and intermediate product chemistry in just comparison of their peace-economy and military uses.

The crown-witness of the prosecution in this matter, ZOLAS, also agrees in general with this train of thought. According to his own testimony he differs only in respect to the quantity of preliminary products which were used for the military sector.

(record German page 8027, English page 7916,
QA-document 601, exh. 138).

II. For the evaluation of the evidence only the relative proportion of quantities can be relevant.

The prosecution recognizes the significance of these quantity relations since it wants to prove that "the military might build up by Germany exceeded so much the power of its neighbors that the defendants must have realized that the military machine was supposed to serve the well known national policy of expansion."

(Prosecution trial brief I, page 26).

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But just in this decisive point the prosecution did not prove anything.

1.) It is erroneous to consider this matter in an isolated manner.

The prosecution filled its documents with charts and figures which are supposed to show quantitatively the importance of the I.G. within Germany's chemical industry,

DI 7236, exh. 707, vol. 37, German page 31, -English p. 26).

the Wehrmacht's dependence on the chemical production of the I.G.

Farben

(e.g. DI 10010, exh. 615, vol. 34, German page 125, -Engl. p. 125).

the extent of investments in certain fields of production

(DI 10007, exh. 687, vol. 32, German page 54, Engl. page 54
DI 10026, exh. 689, vol. 33, German page 54, Engl. page 54)

or generally the allegedly "strategic importance" of some I.G. products

(DI 10008, exh. 612, vol. 34, German page 115, Engl. page 115,
DI 10000, exh. 658, vol. 36, German page 108, Engl. page 108 and n).

This evidence and all documents connected with it in any way are, however, perfectly irrelevant in this isolation. Only in relation with supplies actually needed for an aggressive war, with military requirements and with the development of production in Germany and abroad, using comparative measures, do they get any probative value.

2.) False conclusions of the prosecution.

The prosecution when submitting this evidence draws two fatal false conclusions:

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CERTIFICATE OF TRANSLATION

10 June 1948

I, Stanislaw S. FILLBUS, Civ.No. 170 1043, hereby certify that I
am a duly appointed translator for the German and English languages
and that the above is a true and correct translation of the
original document.

Stanislaw S. FILLBUS
Civ.No. 170 1043.

1.) Starting from the historical fact that a war broke out in 1939 the German re-armament is retrospectively considered as a means of preparing and planning this war, a war which could only retrospectively be defined for the mass of the German people as a war of aggression. By such tactics causality is confused with guilt in the sense of penal law. This argumentation may be correct for the leading politicians who planned the re-armament with their mind on a war of aggression. This, however, would only apply to Ambros if he had also been informed in regard to the plans of the political leaders, or if he had had any influence thereon. Thus, in the IMT, the French Prosecutor de Menthon limits the definition of responsibility as follows:

"It is clear that in a state organized along modern lines responsibility is limited to those who are the direct executives for this state."

As ^{to} these very points, however, the Prosecution does not adduce any proof.

The defendant Ambros, has, in any case, never been informed of the secret plans of the cabinet, has never participated in any conferences connected therewith, and has never held an official post, neither in the Reich Office of Economic Expansion, the Goebbels or the Speer Ministry, at home or in the occupied territories. Thus he had never to take political decisions. His work was exclusively limited to the work of a prominent chemical expert in the field of organic chemistry. (Cf. supra page 1 seq.)

He especially lacked a comprehensive survey of the Four Year Plan and its purpose which the political leadership perhaps thought it had, and so it was that he did not get acquainted with the Four Year Plan until 1947/48 in Nuernberg. It is therefore an idle question to put to Ambros whether the version: "The Four Year Plan is intended to prepare the German economy within four years for total warfare,"

(III-1436, PS-Exh. 435, Volume 21, German page 3, English page ~~200~~ 3)

which was the result of a conference with Field Marshal Goering on 16 July 1938 at Karinhall, meant the planning of an aggressive war, or preparation for the needs of defense, in case of war.

These conferences were "top secret" and were thus confined to a very small circle of those only who were immediately concerned. AMEROS did not participate in such conferences, neither did he receive a copy of these memorandums, and he, Ambros, was only called upon to join these conferences when his collaboration in a partial sphere was absolutely necessary for reasons of technical chemistry.

(Cf. Ekmann affidavit GA-Exh.209, GA-Document 329, vol.C).

- 2.) The second false conclusion lies in the Prosecution's obvious belief to have proven that, when having been proven that IG Farbenindustrie had been a concern of importance, Farben must also have had the required insight into the economical situation in Germany, and that it had a decisive influence thereon. Even a conclusion from outward circumstances could be a false conclusion.

B

In detail, the following points must be considered:

I. No conclusions can be drawn from mere figures without a comparative basis.

- 1.) The I.G. could not tell in how far military requests seemed to be still consistent with unobjectionable re-armament.
Even the leading directors of the I.G. had no particular insight into the production and output request which might still seem justified from the military angle.

The IG could not have this comprehensive insight, the less so since even the leading representatives of the Army Armament Office had no such insight.

NI-6797, Exh.449, Volume 21, German page 56, Engl.p.19, expressly shows that

"The Army Armament Office has not the required insight into the possibilities of the German chemical industry and into the various details of the raw material situation. On the other hand, it is not the task of industry to calculate how many guns the Wehrmacht needs, and how much powder and explosives are required for these."

(NI-6840, Exh.448, Volume 21, German page 55, Engl.p.12).

Nor would it have been possible for the I.G. to give an estimate as to the justification of the output and production as planned and requested.

To do so would have implied calculations based on a familiarity with all the other conditions, such as the actual situation in the metal and construction trades etc.

2.) Only military experts could fathom the ultimate purpose of the individual plannings.

Only a military expert, moreover, could have recognized the ultimate aim in the planning as applied to the powder and explosives branch. Dr. Zahn, Department Chief in the Army Armament Office, declares that he did not have a clear conception of the significance of such plans (as FP 63) as follows:

"If the divisions, the number of divisions, were known, certain conclusions could be drawn. Nobody, however, knew how the commitment was planned and for what purpose all this was planned. Anybody who had had a military preparation -I have never served as a soldier- and had been trained as an officer, might have had a better idea what it all was about; as it was, however, we were often not even told what the others, in the same building, were doing in the same branch, and, in the main, we were often left in doubt as to what it all was about, and as to the aim in view. Sometimes one could only shake one's head- the requirements might be such today, different tomorrow, different again in three days- because such frequent changes were made."

(Transcript German p.11 691, Engl.p. 11 589, cf. also German p.11 587, Engl.p. 11 449, and German p.11 591, Engl.p. 11 454).

This applies all the more to AMBROS! He too never was a soldier,

(Transcript, German p. 6182, Engl. p. 9126)

and, besides, as a chemist, he only dealt with a limited sector in a technical sphere. He did not even know of such plans

in their entirety they were none of his business.

(Transcript German page 8179, Engl. page 8104/5).

Only certain partial sectors were brought to him for technical carrying-out.

Nevertheless the Prosecution tries to deduct a knowledge of increasing military preparations through the concepts FP 23 and FP 63, FP 60 - 40 and others.

(Transcript German p. 8180, English p.8105).

The meaning of such expressions, however, could not have been clear to civilians, such as AMEROS, even if they had heard these expressions somewhere, which has not been proven either. Even a high ranking officer, like the witness Huehnemann of the OKW, "did only learn the meaning of these key numbers here (in Nuernberg) during conversations with the Defense".

(Transcript German page 13 788, English p. 13 495).

Secrecy regulations were "extraordinarily strict" in Germany.

(Transcript German p. 13 795, English p. 13 500).

- 3.) Even within the I.G. the individual person had no comprehensive insight.

Not even in the I.G. could a Vorstand member gain, for operational reasons a comprehensive insight into the entire production of I.G. In any case, however, the development of the total production of I.G. gave no rise to misgivings in regard to a contribution towards the preparation of a war of aggression

(cf. Basic Information, Volume II).

- 4.) The estimated production figures and production output were entirely inadequate for the waging of war.

The development in the own sphere of work, however, strengthened the general conviction that, seen as a whole, the increase of production and the increase of output in the powder and explosives branch was wholly inadequate for warranting the thought of a war at all.

This was not only the conviction of the Army Armament Office
(cf. Zahn transcrip, German p.11 625 and 11 691

English p.11 488 and 11 569/90),

but especially the conception of Ambros too. During his examination

(Transcript German p.8044, English p.7970) Ambros makes

the following comment to NI-8790, Exh.609, Vol.34, Engl.p.39:

He did not know the document, since this was an official report, and as this was treated as a secret matter; but "one had the feeling, from the limited sectors one was responsible for, such as Diglykol, that in fact there was no preparation. It was a possibility of production, I believe it was 10% of the figure utilized in war"

(Transcript German p.8044, Engl.p.7940).

.....
"What I know did not cause me to have the feeling that something was wrong here for I only noticed that there was no great interest whatsoever during 1938 and 1939 to expand these installations."

(Transcript German p.⁸⁰⁴⁵8045, Engl.p.7970/1).

- 5.) The actual situation in the powder and explosives field at the beginning of the war in 1939 confirmed these estimates.

A diagram referring to

NI-8790, Exh.609, Vol.34, German p.67, Engl.p.39,

GA-doc.615, Exh.150, Vol.VI A, p. 38,

shows that the output possibilities in February 1939, in the fields

Preliminary Products p.12

both of powder and of explosives were far below the requests of the General Staff, and were even only about 35% of the so-called Schnellplan aim, which in turn was considerably lower than the small requirements of the General Staff. The German output was in fact only about 1/3 of the English and French output at that time.

Thus it cannot be said that the German output in the field of powder and explosives "had by far surpassed" that of the neighbouring countries.

(cf. the testimony of Dr. Zahn of the Army Armament Office, transcript German p. 11 692, Engl. p. 11 590).

These statements are confirmed in detail in the various prosecution documents.

(e.g. MI-8796, Exh.459, Vol.21, Engl.p.132,
MI-14071, Exh.1919, p. 7 of original :

"Nitro-Glycerine is by no means available in wartime in the required quantity"....)

II. The trend in the development of I.G. production admits no conclusions in regard to war preparations.

The trend of I.G. production does not permit any conclusions either.

1.) The starting point for Germany is a completely disarmed state.

It must be considered that the rising trend of production of preliminary and final products starts from a situation which could not be found in any comparable country, viz. from that of an entirely disarmed state. The military and political leaders made it their first objective to secure the output for the "permitted" requirements of the 100 000 men army and/or to adapt this to

military requirements.

(cf. CA doc. 607, Exh. 142, p.19).

The task was "first to reconstruct everything that had been destroyed during the world war in the field of powder and explosives, and the corresponding plants essential to the 100 000 man army, that is to say to close the gaps and to provide a regular basis."

(Zahn examination transcript, Germ.p.11 585,Engl.p.11 445/46).

Not until then did the program expand within the frame of re-armament according to the requirements of the General Staff, in which connection, however, not even the co-workers in the Army Armament Office knew or learned the size of the army planned for Germany in 1935.

(Transcript Germ. p. 11 587, Engl. p. 11 449).

As the witness Zahn has credibly stated, the situation was thus "that the right hand was not allowed to know what the left hand was doing".

(Transcript German page 11 591, English p. 11 453).

Thus it can be understood that the increase of production in connection with re-armament shows for Germany a curve differing from that of other countries which started out with the satisfied requirements of a considerably larger army which had not been disarmed.

- 2.) The trend includes those preliminary products whose increase was brought about by the change-over to substitute products for peacetime economy.

This production trend also includes those increases brought about by the particular raw material shortage in Germany, independent

Preliminary Products page 14

of any military interest in the corresponding production. Reference has already been made to these autarchic tendencies. The increase, caused by these tendencies, of preliminary and intermediate products, which, however, only serve to satisfy a truly peacetime want, is inseparably contained in these figures.

This applies especially to the derivatives of ethylene and acetylene. Equitable comparisons with other countries can only be made if one considers that these nations, richer in raw materials, possess the raw material, as for instance glycerine, for the lacquer, paint, and powder sector as a latent potential raw material, whilst Germany tried to procure substitute materials by way of synthesis, i.e. by a circuitous chemical procedure which also caused a corresponding increase in the output and in the production considered important in the light of war economy. In reality, however, the cooperation of the I.G. was dependent on a stop-gap system which had become necessary.

(Diglycol 1347, hexogene 1351,

transcript German page 8163, Engl. p. 8088).

This is the proper reason why diglycol as a substitute product for glycerine occupies so much space in the evidence of the Prosecution. Likewise, pentaerythrite has only become of significance to the Prosecution as a preliminary product for explosives, whilst the I.G. really boosted this product for peacetime economy (for lacquers).

(OA Doc. 613, Exh. 148, Vol.VI A, page 32).

The starting point, in fact, of all efforts on the part of I.G. to remedy "the glycerine shortage which became more and more acutely felt" in Germany by the development of substitute materials, was the intention thus to be in a position of filling a purely peacetime economic need.

According to this the I.G. intends "to organize the production of synthetic glycerine through own resources and without any subventions such as a guaranty of purchase or the regulation of prices"....., "in order to start an accelerated production of their own, and in view of the unsatisfactory situation in regard to the supply of glycerine, to be able to cover their own large requirements which are bound to increase owing to the development of alcydal lacquers"; that was in 1936.

That the Army Armament Office, of course, also "was in urgent need of a production method for glycerine ", (1935) is, according to the situation then prevailing, very obvious.

- 3.) The production curves of the I.G. correspond in their upward trend to those of other chemical firms of world renown.

This is accentuated by the fact that the trend of the I.G. products coincides with a general business boom in the world, thus coinciding with the normal upward trend brought about by the recovery from the world-wide depression, and, on the other hand, caused especially by the technical development in the field of acetylene and ethylene chemistry, particularly that of plastics. The similarity of the production curves as shown by the world's large chemical firms is downright striking.

(cf. Basic Information, vl.II, transcript of 10 May
page 900).

In Ambros' proper field of work especially, an oporous boom in plastics was experienced throughout the whole world.

In the TEA session of 26 September 1940, Kelleck, a co-worker

of AMEROS, speaks in Ludwigshafen of the "impetuous development in the field of plastics", of the "extraordinarily manifold utilization of plastics" (besides buna, "gutta-percha, balatum, leather, artificial leather, metals, textile fibres, resins, oils, waxes, cellulose production and natural colloids"), their "rapidly increasing importance" and their "ability to withstand crises", and that "the planned production of plastics will, in peacetime be sure of finding a ready market too." As Dr. ter Meer explained, a total of 100 million Reichsmark was allowed for the plastics sector of the I.G., and the turnover for 1940 was "estimated at 77 million Reichsmark, that of auxiliaries at 25 million Reichsmark."

It must, moreover, be kept in mind that the output of products relevant to war economy only shows a mere striking upward trend from 1940 on, that is to say after the outbreak of war.

(Cf. HI-10580, Exh. 616, vol. 34, German p. 230, Engl. p. 126).

III. The so-called "strategical importance" of certain products admits no final conclusions either.

Among the Prosecution documents some may repeatedly be found which have no other purpose than to prove that no war could have been waged without the I.G.

(Cf. HI-6763, Exh. 12, Vol. I, German p. 85, Engl. p. 85).

The witness for the Prosecution, General Hanneken, who, besides other tasks, was also responsible for the construction of Auschwitz, has interpreted this hackneyed finding to the effect that it could also be applied to other fields, and that these findings "could likewise be established in regard to the chemical industry of the whole world".

(Transcript German p. 986, English page 1025).

On the contrary: In Germany especially, on account of the close relationship of all synthetic products, these conditions represent, from a military point of view, such a serious inter-dependence as to turn the "centers of gravity", brought to the fore with such stress by the Prosecution into "bottlenecks" during wartime.

(NI-8594, Exh. 131, vol. 5, English page 178,

NI-10560, Exh. 616, vol. 34, English page 126,

NI-8595, Exh. 708, vol. 37, English page 104, German p. 112,

NI-3767, Exh. 715, vol. 37, English page 132, German p. 142).

This "closest interconnection of peacetime production with products of military importance" was a fatal necessity for Germany, which the industry had to face, although it endeavored to attain the desired dissociation by "the erection of emergency plants separated from their mother industry."

(Cf. NI-8640, Exh. 448, vol. 21, German p. 49, Engl. p. 12).

Endeavors were kept up "to find a utilization in peacetime economy for those products which could not yet be utilized at the time."

In this connection "a possibility was shown, especially by the latest development in the plastics sector, to apply ethylene chemistry on a large scale ^{for} peacetime economy too." (Exh. 448, s.o.)

- IV. An equitable opinion about the increase of production can only be given if one considers the particular situation prevailing in Germany.

- 1.) The I.G. endeavored to keep a considerable distance from final manufactures pertaining to military matters.

Nevertheless, the I.G. tried to keep a pronounced distance from engaging in the manufacture of final products for military economy, moved by the idea that the I.G. had always been a private enterprise with the purpose of serving the permanent needs of peacetime economy.

This will to stay aside must not be interpreted as an attempt to sabotage re-armament, for the I.G. did not regard re-armament as a criminal action per se, and, as to the preparation of an aggressive war, this was not even mentioned as a possibility.

- a) In contrast to World War I, wherein the predecessor firms of I.G. produced 73% of all explosives, according to the testimony of General Mergan (transcript 730-751 German, Engl. p.762-783), the I.G., in World War II, kept almost entirely aloof from the manufacture of powder and explosives.

(Zemann-Affidavit, OA Dec.610, Exh. 145, number 1b).

It is a materially false statement if the Prosecution contends that I.G. had produced from their nitrogen and intermediate products "84% of Germany's high explosives and 70% of Germany's gun-powder".

(Trial Brief I, page 28a,
NI-8313, Exh.325, vol.12, German p.33, Engl. p.74,
Transcript German p. 1087, Engl. p.1118).

The DAG volumes of the defense and especially the witness Schindler, when examined on 28 April, make it clear that the far greater part of these products were manufactured at the Montan plants owned by the Reich. This even applies to the intermediate product, diglycol, produced for more than 90%, as a substitute for nitroglycerine, by the I.G., at the Montan plants owned by the Reich.

(Transcript German p.8172, Engl. p.8096, Comment to
Exh. 1817, NI-6170, vol.33, Engl. p.922 and
Exh. 1919, NI- 14 071,
Transcript, German p. 8173, Engl. p.8097).

This fact pertaining to the field of preliminary products, such as diglycol, is worthy of special notice, since the experiences of World War I have shown that the I.G. could not have withdrawn from co-operation in satisfying the demand for powder and explosives in the case of war, in view of its superior position as a chemical enterprise.

If, as has been shown, it extended its dissociation to the preliminary products too, this shows, all the more, the willingness to limit itself, within the frame of given possibilities, to a production geared to peacetime economy.

- b) The lack of understanding by the Prosecution of this situation is, by the way, continuous. The Prosecution always tries to prove that, whilst the I.G. refused to cooperate in the field of chemical warfare agents, it did not refuse cooperations in the field of powder and explosives.

(Transcript of the cross-examination of the witness
Dr. Zahn, German p. 11616, Engl.1.11 400).

An expert witness from the Army Ordnance Office gives an unmistakable reply to this contention: I.G. Farben "have cooperated in the production of stabilizers and diglycol, not by means of the installations on their own ground and property, but only in plants owned by the army which were erected on ground given out as hereditary lease and bought by us. (Army Ordnance Office)."

(Transcript German p. 11 616, Engl. p. 11 431).

This expedient was found, since the I.G. "proved to be one of the most difficult firms to approach, who declined to discuss certain subjects altogether." (OA-Doc. 607, Exh. 142, vol. VI A page 20).

- c) The initiative to establish installations for the output considered as necessary by the General Staff in order to meet the demand for powder and explosives was not taken by I.G., but by Reich Offices. "Because of this uncompromising attitude the Army Ordnance Office of the Army High Command responsible for the supplies of gun powder, high explosives and chemical warfare agents for the entire Wehrmacht was forced, in the first few years of re-armament, i.e. around 1934/35, to approach other firms, such as the Auergesellschaft, Goldschmidt, Kali-chemie, Riedel de Haen, concerning the erection of new chemical factory installations. In order to meet the gun-powder requirements of the Wehrmacht new plants had to be erected for the preliminary product diglycol in the shape of installations owned by the Reich which were incorporated in the Lenten Industriewerke G.m.b.H. owned by the Wehrmacht."

(OA-Doc. 510, Exh. 145, vol. VI A, page 25).

This is confirmed by another representative of the Army Ordnance Office to the effect that the Army Ordnance Office approached I.G. and not vice versa. "This was the customary rule, for the industry cannot know, of course, what the requirements of the Army Ordnance Office really are, nor the direction of its aims."

(Zahn transcript German p. 11 695, Engl. p. 11 593).

In a document of that time, NI 14 071, Exh. 1919, special mention is made in connection with the production of explosives to the effect that "the initiative and cooperation of the Army Ordnance Office" cannot remain unmentioned.

(Cf. transcript Schindler)

- d) In the field of explosives "all measures were taken by the Army High Command as the competent office in agreement with the Reich Office"

(GA-Doc. 611, Exh. 146, vol. VI A, page 28).

In this connection there was no absolutely clear delimitation of duties among those offices.

(Cf. Zahn examination transcript German p.11 603,

English p.11 494).

The industry which had received corresponding orders, had to agree to this.

The military authorities even put forth the claim "that these plants (of the powder and explosives industry) could carry out their production in detail only under constant supervision and instruction", meaning "practically the entire chemical industry including its preliminary suppliers"

(NI-8840, Exh. 448, vol.21, German p.54, Engl. p.12).

The Reich Economy Office, taking position to this demand, which was bound to cause a freeze-up" suggested a more flexible "cooperation" between the Reich Offices and the industry, but emphasizes: "The apprehended ideas of private business do not apply, because the necessary means are always available in order to prevent mistakes."

(NI-8840, Exh. 448, vol.21, e.c.p.86, Engl.p.12).

CERTIFICATE OF TRANSLATION

9 June 1948

I, Leon RATZERSDORFER, ETO 483, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Leon RATZERSDORFER
ETO 483.

- 2.) Within in sphere of activities of AMBROS all important preliminary products for gun-powder and high explosives were manufactured in ^{MONTAN} ~~mining~~ enterprises belonging to the Reich.

AMBROS was able to make his reserve particularly marked in connection with the production of military economy: Schkopau, Huels, Gandorf were enterprises of the Montan, as far as the manufacture of preliminary products for gun-powder and high explosives were concerned. The planning of these plants was in no way instigated by AMBROS; on the contrary, the I.G. was compelled to co-operate by way of commissions.

- a) The foundation of the "Montan" enterprise Schkopau was considered "necessary by the OKH for purposes of the country's defense. . . ." and in June 1938 they gave the commission, in the form of a preliminary order (Vorbescheid) to build an Ethylene, Ethylene-Oxyde, - and Diglykole plant.

(NI-7427, Exh. 216, vol. 8, engl. p. 66).

The ^{MONTAN} ~~mining~~ enterprise at Wolfen

(NI-4493, Exh. 594, vol. 33, germ. p. 37, engl. p. 57)

was likewise started at "the request of the OKH"

Huels NI-7769, Exh. 559, vol. 28, germ. p. 212, engl. p. 135

Auschwitz NI-4991, Exh. 651, vol. 36, engl. p. 63

(" had to be constructed by the I.G. at the request and at the cost of the OKH") for the manufacture of preliminary products for gun-powder and high explosives.

- b) The history of the development of the Gandorf plant is particularly characteristic for the procedure of the OKH and ~~there~~ reserved attitude of the I.G. in connection with these "Montan" foundations; this plant was also an enterprise of the Montan which had to be run by the I.G. via a subsidiary company.

(transcript germ. p. 8045, engl. p. 7971)

The I.G. was "pressed" to build this plant (NI-13 524, Exh.2315). It was only left to them "to confine their activities to those building sectors of which they were exclusively in charge", and "to hand over as many building sectors as possible to other firms, in order to relieve our (the I.G.'s) designing offices and workshops." (NI-13524, Exh.2315).

In the case of Gendorf (Trostberg) the IG only declared itself prepared "to make the results of their experiences available, and to assist the construction of the building in the capacity of a consulting technical office".

(NI- 7430, Exh. 598, vol.33, germ.p.165, engl.p.87).

In an agreement concluded between the OKH and the Bayerische Stickstoffwerke it says: " At the request of the Army High Command you have accepted the task of erecting the plants. The Reich has delegated to the Montan the responsibility for this enterprise.

The part of the plant containing the chemical apparatus will be mainly constructed and built by the IG Farben-industrie A.G. at your (Bayerische Stickstoffwerke A.G.) order".

(OA-Dok. 502, Exh. 119, page 4)

NI-4990, Exh. 637, vol.35, germ.p. 220, engl.p. 132).

The plant as such was erected with the help of Reich funds, "as it is purely a plant for emergency purposes".

(NI-7430, Exh. 598, germ.p.167, engl.p.87).

It was decided "by Reich Agencies" to erect this plant for the manufacture of Diglycole, Oxole, and Acetic acid, needed for purposes of the "A-case", but it was not intended" to start production in the plant during peace time".

(NI- 7430, Exh. 598, vol.33, germ.p.169, engl.p.87).

That was in 1937, at a time when AMBROS himself was not yet a Vorstand member and could only act in agreement with his Spartenleiter ter MEER.

- 3.) The "Reich-owned" Montan-plants do not come within the production program, and are completely outside the jurisdiction of the IG.

The scale of production in the Montan-enterprises and the fact that the technical running of the "Reich-owned" plants of the Montan GmbH was partly taken over by the IG cannot play any part within the framework of evidence submitted in this trial.

- a.) Scale, nature, and starting date of production in these Reich-owned plants were exclusively fixed by the OKH. The IG had no authority to give orders and consequently no responsibilities, especially as the erection of the plants was ordered by way of commissions.

NI-4491, Exh. 354, vol.13, germ.p.88, engl.p. 56 shows such a "Montan project" as was drawn up for Reich purposes by the prosecution witness ZEIDELHACK, who was at the time Director General of the Montan Industriewerke, in collaboration with the Army Ordnance Office.

(Schmidt-Losberg in his cross-examination transcript German page 3457).

In this project the "Commission" which the OKH placed with the IG is clearly outlined; the IG was given the task "of erecting plants for the manufacture of a certain quantity of the various products mentioned".

The IG is "obliged" to run the plants" at the request of the OKH". The IG itself can only use the plants" for private purposes with the approval of the OKH". The building commission proper contains the "obligation" to erect the plants" as economically and as speedily as possible", and to "make use of all patents, processes and experiences available."

(NI-4491, Exh.354, vol.13, a.s.O.S.88, Engl.p.56). It was on account of this lastly mentioned obligation that the OKH approached the IG, which had the greatest collection of experiences and patents in the chemical field at its disposal.

(cf. in this connection NI-7711, Exh.672, vol.31,
Germ.page 76, Engl.Page 27).

- b) It can, however, be held to the credit of the IG that they made no efforts to have these preliminary products for gun-powder and high explosives manufactured in their own plants, but that they tried, on the contrary, to remain as detached as possible from these projects in their capacity of a private firm.

It was not only the IG which had to take over the running of Montan plants by way of subsidiary firms. In contrast to the both vague and incorrect statements of the witness Zeidelhack, who maintains that 36 of 37 Montan plants were run by the IG,

(NI-9193, Exh.698, vol.32, Germ.page 104, Engl.p.104), it has been proved by documentary evidence that Montan enterprises had to be founded within the entire German industry (that is to say, not only within the chemical industry), and that even within the chemical industry the IG, or its subsidiary firms, only ran a fraction of all the chemical Montan enterprises.

(O.A.-Doc.7, Exh.7, vol. 5, a.S.15,

O.A. -Doc. 504, Exh.121, vol.5, a.S.19/24).

The surveys showing this were explicitly confirmed by the expert witness Schmied-Losberg in his examination,

transcript Germ.page 3464, Engl.page 3443

as also by the Montan Industriewerke GmbH.

(O.A.-Doc.503, Exh. 120, vol. 5, a.S.16/18).

- c) It is characteristic that even within the framework of the so-called Montan -project the IG endeavored to become more and more detached from it.

This tendency characterises the attitude of the IG with regard to the so-called IG - project, in contrast to the Montan-project.

(NI-5685, Exh. 353, vol.13, Germ.p.65 ff., Engl.p.53).

The IG preferred to adopt the IG project in the Reich plants taken over by them, "because the products of our Reich plants come within the field of our intermediate products which are mainly of importance for private industry."

(Exh. 353, page ⁵³2).

The IG even went so far in their negative attitude as to refuse to comply with the request of the Ministry for Munitions, which proposed that they should under given circumstances take over the Montan plants themselves (by way of acquisition) and the characteristic reason they gave was the following: "The IG understood and welcomed the desire of the Ministry for Munitions that industry should again be taken over by private firms to an ever increasing degree. The IG had always been ready to take risks and had proved this often enough in the past; but the idea of private firms taking over should be applied to the proper objects. The Montan enterprises were completely unsuitable for this purpose, as they were plants which had been erected purely for purposes of war economy and which would be quite unmanageable for any possible purposes of private industry in the future".

(NI-7377, Exh. 645, vol. 36, Germ.p. 44, Engl.p.37).

- d) How negligible was the IG. responsibility even for those Montan plants which they ran themselves, can be gathered from the fact that the Montan plants were controlled to a considerable degree by the State-governed Montan Industriewerk GmbH, by means of circulars, instructions, rights of supervision, fixing of prices, provision of raw materials, manufacturing commissions etc.

(cf. examination Schmied-Losberg, transcript

Germ.p. 3464/3467)

These interferences by the State even reached a point where "the freedom of action of the leaseholder (IG) was often restricted by the Montan in a way which was quite incompatible with the position of leaseholder." (Exh. 545, page 44.)

The details given by the expert Schmied-Losberg, who was temporarily the manager of the Montan Werke GmbH, confirms this position. In spite of the "not inconsiderable reduction in price and other facilities", the IG rejected the sale offers of the Ministry of Munitions and the Army Ordnance Office, and the reasons they gave, amongst others, were the following: The Reich was the sole contractor, also the sole purchaser, and the sole consumer. The production capacities, which were on too large a scale for peace time production, and the manufactured goods, which were intended purely for armament purposes, did not fit into the production program of the IG. After all, the IG was a limited company, that is to say a profit-making company. The yield was completely insufficient, as it amounted on an average to roughly 0,2%.

Actually the yield amounted to "between 0,20 and 0,26% of the invested capital."

The IG never acquired any Reich-owned Montan plants.

(O.A.-Doc. 505, Exh. 122, vol. V A, page 26).

This incident happened in 1943, i.e. during the war.

AMBROS was present when this refusal took place and he took an active part in it, as the calculations concerning the yield are due to him. (AMBROS himself in his examination

(transcript Germ.p. 8001, Engl. page 7890)

stated his point of view with regard to these Montan questions).

Against this general background the unmilitary nature of AMBROS activities, which were based on a peace-time economy, shows up particularly clearly within his own sphere of work.

I. AMBROS is the expert for the chemistry of preliminary products. Within his sphere of activities no gun-powder or high explosives were manufactured.

1.) AMBROS had no influence either on the DAG, nor on the WABAG. AMBROS was neither a member of the Aufsichtsrat nor a member of the Vorstand of these companies nor did he hold any position within the business management. Nor did AMBROS hold any position within the framework of the organization of commercial economy, or within the Reich Office for Economic Expansion, or within the Ministry SPEER, which had anything to do with this sector. AMBROS' activities were confined to the manufacture of preliminary and intermediate products. "Dr. AMBROS had nothing to do with high explosives but he did have something to do with the preliminary product Diglycole."

(O.A.Doc.611, Exh. 146, figure 1).

"In contrast to their activities during the world war, the IG refrained as far as possible from taking part in work connected with gun-powder and high explosives"

(O.A.Doc. 610, Exh. 145). AMBROS in particular, whose sphere of activities was for instance directly connected with the entire Ethylene chemistry," as a basis for Glycole and Diglycole" (preliminary product for gun-powder) "constantly rejected the manufacture of ^{Nitro compounds} ~~catalysts~~, that is to say, high explosives". He "practically barred the mass production of Diglycole (preliminary product for gun-powder) as required by the Army from the Ludwigshafen plant" (O.A.-Doc. 610, Exh.145, figure 2).

An expert for gun-powder and high explosive chemistry, Oberingenieur Schindler, enumerated the real gun-powder and high explosive plants. AMBROS did not participate in any of these plants of the DAG, WASAG, Verwertchemie, etc. AMBROS was only considered to be an expert for the chemistry of preliminary products (13007).

2.) The further processing for the purpose of gun-powder and high explosive manufacture takes place separately from the manufacture of preliminary products, both in fact, and from a legal point of view.

In his direct examination AMBROS cleared up the connections between the chemistry of preliminary products and the manufacture of gun-powder. "Diglycole is a harmless product". "It is only in the gun-powder factory, when Nitric acid is added, that gun-powder, Diglycole - Dinitrate, is produced". "the characteristic thing about these gun-powder factories, from the chemical point of view, is their treatment of all these preliminary products with Nitric acid and Sulphuric acid a process which is carried out with the very greatest precaution and applied to small quantities only".

(transcript Germ.p. 8021/22 Engl.p.7909/10).

"The IG was not even allowed to carry out this further processing for purposes of high explosive and gun-powder manufacture; this was not permitted for safety reasons. The industrial police had forbidden that larger quantities of gun-powder and high explosives were produced in normal plants".

(Examination of the expert of the Army Ordinance Office, Dr. Zahn, transcript German page 11694).

The further processing of the preliminary products was therefore carried out by gun-powder and high explosive plants intended, "and competent" for this purpose. ((09607)).

"The leading firm in the field of high explosives, DAG, in

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which the IG had a capital share, always appeared as an independant, self contained, and entirely self-governed company, particularly in negotiations with the Army".

(O.A.Doc.610, Exh.145)

Both legally, and in fact, a very definite deviding line was thus drawn between the sphere of activities of the IG's chemistry of preliminary products, on the one hand, and the gun-powder and high explosive industry of the DAG, on the other. This deviding line is shown by

(NI-7771, Exh. 599, vol.34, Germ.page 14/18, Engl.p. 1)

The high explosive plants Doernitz, Giessen, and others, filled the high explosive charge into the shells and bombs. in none of the plants of which AMBROS was in charge was ever any shell or bomb filled with high explosive.

In NI-4492, Exh.118, vol.5, Engl.page 130, the prosecution submitted a memorandum to the files of a subordinate official from IG Wolfen, which contained the statement "that AMBROS had been asked by the Army Ordnance Office to investigate the requirements of the WASAG and the DAG, as well as their storing facilities." Apart from the fact that AMBROS had no knowledge of this memorandum - it was neither forwarded to him nor initialled by him - it has been shown by the document

NI- 4434, Exh. 119, vol.5, Engl.page 132,

that these tasks were dealt with by a certain Major Nieschlag of the OKH.

(NI-4492, Exh.118, vol.5, Engl.page 130,

NI-4494, Exh.119, vol.5, Engl.page 132, V.S.153 and 155

Record 8164 bis 8167, Engl.page 8088 - 8092.

II. AMBROS was only employed on occasion in a consulting capacity, in connection with processes dealing with preliminary products.

It is therefore understandable that AMBROS had no insight into the gun-powder and high explosive manufacture, and could not have a survey of the gun-powder and high explosive production.

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Witnesses coming from the gun-powder and high explosive plants also confirmed that AMEROS never had any conferences with the DAG or the WASAG, either in connection with their demand for preliminary products, or with regard to capacities. His occasional discussions were only concerned with technical considerations connected with the processing of preliminary products.

(cf. testimony Schindler and transcript
German page 8164, Engl. page 8088).

It must be remembered that the Army Ordnance Office was "responsible for the gun-powder and high explosive supply for the entire Wehrmacht."

(O.A.Doc. 610, Exh.145, figure 3).

All the plans of the Reich Agencies concerning gun-powder and high explosive had thus nothing to do with AMEROS and he was not informed about them. His sphere of activities was confined to the organic preliminary products.

As AMEROS and his staff of collaborators had collected many important experiences in connection with the building of the Buna plants, and as "the existence of a highly developed chemistry of ethylene -Oxyde which had been built up at the Ludwigshafen plant was very valuable for the production of Diglycole. . . .",

(O.A.Doc. 610, Exh.145, figure 6),

it was obvious that one should approach AMEROS in this connection in order to obtain his advice on chemical - technical matters.

(O.A.Doc. 607, Exh. 142).

1.) AMEROS' activities had nothing to do with the nitrating stage. He was no expert on that.

But he could give no advice about the nitrating stage which leads to gun-powder or high explosives, for he was no expert on that. "Ludwigshafen, and Dr.AMEROS in particular, however, did not collaborate in the actual field of gun-powder, and high explosives, apart from giving theoretical-chemical advice concerning literature and experience."

(O.A. Doc. 610, figure 6, Exh. 145).

- a) The document NI- 13525, Exh. 2330, which the Prosecution submitted during the cross-examination of Schindler, provides a further proof for the fact that AMBROS' activities were confined to the field of preliminary products. When manufacturing Hexogene the concentration of Nitric acid presents great difficulties, and it was therefore understandable that the high explosive plant Elsnig desired to obtain the advice of the Nitric Acid factory Oppau. AMBROS acted as an intermediary between them and Prof. KRAUCH, who was at that time still a member of the Vorstand of the IG and also the chief of Oppau. O.A. document 212, exh. 65 comes into the same category, for the primary idea of setting Ludwigshafen the task of developing the K-process, was based on the consideration that in the case of all 4 Hexogene processes the IG would have to take over the manufacture of the preliminary products; but on 23 May 1939 "Ludwigshafen terminated their work in connection with the development of the K-process", that is to say, they did not go beyond the experimental stage in the laboratory.
- b) In view of his work in connection with Glycole and Diglycole, AMBROS was also instructed to answer all queries which were addressed to the IG concerning substitutes for Glycerine.

(NI- 13 563, Exh. 1917).

At that time - in 1935 - AMBROS, a young Prokurist of the IG, was the leading man in this field, which became of interest in view of new results obtained by research work.

2.) He only co-operated in the capacity of a technical consultant in the construction of the Montan plant Gendorf.

It was inevitable that at the request of the then Office for German Raw and Industrial Materials, the IG was also compelled to make its experiences available for the purpose of erecting the emergency plant Trostberg.

In their letter of 28 April 1937, ter Meer and Ambros declared themselves prepared to "act as a consulting technical office for the carrying-out of the construction work."

(NI- 7430, Exh. 598, vol.33, Engl.page 87)

NI-13524, Exh. 2315 recalls the fact that the office for German Raw and Industrial Materials had planned to erect several Carbide factories. At AMBROS' advice this program was "reduced" Perhaps for purely economic reasons or practical reasons of technical expediency,"

(transcript German page 11 696, Engl.page 11 593)

and in contrast to the official propositions, a very much simplified but economically sensible solution was found. At AMBROS' suggestion the IG at the time detached themselves from the proposition and " confined their activities to taking over those building sectors of which they were exclusively in charge, while handing over as many building sectors as possible to other firms, in order to relieve their own plants."

"The Board of Directors of the Bayerische Stickstoffwerke and of the Bayerische Kraftwerke (Viat -Staat) took over the official management of the construction work. The IG confined themselves to the manufacture of the preliminary product Diglycole, which "is further processed in the gun-powder plants", and of "Oxole, which was further processed, or to be further processed, by Orgasid."

III. AMBROS, when manufacturing the preliminary products for gun-powder and high explosives within his own sphere of activities, did not intend them for military purposes, but adapted the manufacture strictly to economic peace-time requirements.

The purpose for which the chemist intends the preliminary products manufactured is of the greatest importance for the question as to whether preliminary products can be connected at all with the planning and the preparation of an aggressive war.

The Prosecution documents mention the following preliminary or intermediate products:

Diglycole
Formaldehyde
Hexamethylenetetramine
Nitric Acid
Dinitrodiphenylamine
Pentaerythrite
Aethylenediaminedinitrate .

- 1.) The history of the development of these preliminary products shows that they were mainly intended for civilian purposes.

Firstly it must be remembered that AMBROS is not the inventor of these preliminary products.

- a) Diglycole is a well known chemical product which was invented during the period before the first world war. Its use as a basis for gun-powder goes back to Rinkenbach of the firm of Dupont (USA). In his publications of 1927 Rinkenbach stated that in view of the research work in connection with "dinitrate of diethylene glycole in the explosives Chemical Laboratory of the Bureau of Mines . . . it appears highly probably that diethylene glycole will assume some importance in the explosives industry in the near future". (O.A.Doc. 608, Exh.143)
"The compound is explosive when mixed with similar compounds".

(O.A. 609, Exh. 144).

Evoked by these publications "the military use of diglycole-dinitrate was also explored in Germany".

(O.A. doc. 607, Exh. 142, page 20).

The Diglycole Dinitrate product was somehow in the air,

(transcript German page 11 694, Engl.page 11 591)

"The procedure of applying the diglycole process in the technical field was already in progress when AMBROS took over the group intermediate products in 1934"

(transcript German page 8042, Engl. page 7967)

- b) Formaldehyde has been a well-known and important organic intermediate product for the last hundred years; it is used, amongst other things, for the manufacture of Bakelite and other synthetic materials. Mixed with Ammonia it produces
- c) Hexamethylenetetramine, a pharmaceutical product; this white salt can also be mixed with Nitric Acid and then produces Hexogene, but AMBROS had nothing to do with that process, either technically, or from the production angle.

(testimony Schindler transcript)

- d) Minitrodiphenylamine, a derivate of the Benzole group, (O.A. Doc.1) has been produced at Ludwigshafen since 1908 "according to still available data of the works manager". (O.A.Doc. 602, Exh. 137). It is used as a dye-stuff or is further nitrated to produce high explosives.
- e) Penterythrite, was produced at Ludwigshafen as early as 1930 (O.A.Doc. 613, Exh.148) as a glycerine substitute for varnishes. Mixed with Nitric Acid it produces a high explosive.
- f) Acetylendiarnitrate (N 4 or P H salt) was also produced in small quantities for a short period during the war, and was delivered to a high explosive plant to be processed for the manufacture of high explosives. The high explosive effect of this compound was so negligible, however that it was never put to practical use. N 4 -salt does not come within the provisions of the Control Council and can therefore be eliminated from these considerations. It is rather an odd product which was mentioned as early as 1915 in a patent letter stressing the possibility of its use as a mining explosive (O.A.Doc. 612, Exh. 147)

- 2.) AMBROS' research work was not directed towards the manufacture of final products of military importance.

This is all the more worthy of note as AMBROS, in his position of chief of the intermediate products department, attached great importance to research work as such and gave it his special support. The expert witness SCHNELL said in his examination, transcript German page 8285, that "the research work carried out within the wide field of intermediate products, of which Dr. AMBROS was in charge, was not directed towards the manufacture of such products (i.e. "typical products of military economy"). (Schnell a.a.O. transcript German page 8238, Engl. page 8167).

An analysis shows the following picture, as far as the pre-war period is concerned:

- a) From 1936 to 1939 425 new products were reported for manufacture by the Z.K. department. "Of these 40,1% were preliminary products for dye-stuffs, 29,9% were auxiliary products for dyeing, for the processing and refining of textiles, raw materials for soap substitutes etc., 7,8% were preliminary products for synthetic materials, rubber, softeners, and varnishes, 5,9% were auxiliary agents for tanning and leather manufacture, 15,6% were products to be used in numerous other fields such as pharmaceuticals, plant protection, perfumes, photography, chemicals, preservatives etc." These make up a total of 99,3%; only 3 products, i.e. 0,7%, were typical products for military economy". When compiling this calculation, every product which is in any way connected with the high explosive industry has been included in these typical military economy products".

(Schnell a.a.O. transcript German p.8236/37, Engl. page 8166/67).

- b) Even after the outbreak of war this research policy "was not changed in principle." 7 products, i.e. 2,4%, were typical products for military economy, but a closer inspection shows that 4 of them were products which had already been developed before for peace-time purposes". (a.a.O. page 8239, Engl. page 8168).

- 3.) All preliminary products in the gun-powder and high explosive field, with which AMBROS was connected, are mainly of importance for peacetime requirements.

One obtains a completely distorted picture if one connects the aforementioned preliminary products exclusively with gun-powder and high explosives, as the Prosecution has done. On the contrary, their importance for peace-time requirements is much greater, especially in view of AMBROS' endeavors to make use of them for private industry:

- a.) "Diglycol in itself is no military product; it only becomes such a product if a high explosive plant transforms this Diglycole into gun-powder.

(German page 8007 - 8008, Engl. page 7896)

The main purposes for which Ethylene, or Ethylene-Oxyde, is used today are Glycole, the Glycole-Ethers, and the great and varied assortment of textile mordants. The satisfactory development has had the result that the Ethylene sources are hardly sufficient to meet the increased demand".

"The alcohol ethylene plants in Ludwigshafen and Central Germany, with their high operating costs will be shut down".

(O.A. Doc. 603, Exh. 138).

- b) The fact that the production of the ethylene plant at Ludwigshafen was considerably lower during the 3 first quarters of 1939, and was completely discontinued in April, was due to the desire to limit the production of the Ethylene-oxyde plant of Ludwigshafen, which was working on the least profitable basis, to the minimum necessary to meet the economic peace-time requirements.

"If in 1939 one had counted on a possible outbreak of war at Ludwigshafen one would have had . . . cause to exploit the existing capacities as far as possible even during the first 3 quarters (of 1939).

CERTIFICATE OF TRANSLATION

11 June 1948

I, Julia KERR, ETO 20185, hereby certify that I am a duly appointed translator for the English and German languages and that the above is a true and correct translation of the original document.

Julia KERR
ETO No. 20 185

That the ethylenoxyd production at Ludwigshafen was slowed down for commercial reasons to such an extent in 1939 is a clear proof of the fact that at the Ludwigshafen plant nobody expected the outbreak of a war. (O.A.-Doc. 606, Exh. 139)

"At that time I reduced production to such an extent, because I was no longer able to export in view of the high costs of this production. I did not think of war, because then financial points of view would surely not have played a part at that moment". (German page 8028, English page 7918)

c) The negotiations with the Shawinigan Ltd. (Canada) on the licensing of the just completed ethylen process were also conducted shortly prior to the outbreak of the war, and besides that there are said to be opportunities in the use of diglycol as a tobacco humidifier. That was on 1 August 1939.

(O.A.-Doc. 604, Exh. 01. 140).

On 9 August 1939 - three weeks before the outbreak of the war - the gentlemen from London still expressed their thanks

(O.A.-Doc. 605, Exh. 141)

and a trip to Canada was intended for September 1939. ZAHN summarizes as follows:

(transcript German page 11 612, English page 11 475)

"Well, this is the way of chemistry: In many cases a product can be used for war and peace time purposes and the glycol was at the beginning a purely peace time product, and it did not become a purely military product. (11.612).

d) The dinitrodiphenylamine again became ^apreliminary product for explosives only during the war, while in peace time it is used as a dye.

(O.A.-Doc. 602, Exh. 137).

- e) As last product of this series the glycerine substitute "pentrerythrite" is to be mentioned, which for the purpose of producing explosives was mainly supplied by the emergency installations of the Degussa, while the I.G. production went mainly to the varnish sector. (O.L.-Doc. 613, Exh. 148)

4. In particular ethylene-chemistry, the actual field of work of AMBROS, is a pronounced peace time-chemistry.

Against the interpretation that work with such preliminary products is to be regarded as a preparation for a war of aggression stands the fact that especially the ethylene and acetylene chemistry, the field of work of AMBROS, from which the chemical products which the prosecution uses as evidence logically originate, was mainly a peace time chemistry. AMBROS' life-work was pledged to this peace time chemistry because it was irreplaceable "for the production of goods vital for life of the requirements of peace time economy" and destined for it.

- a) Even in 1943 "the year of the highest output of the German chemical industry" "only 13 % of the acetylene and ethylene quantity produced were used for war products proper." (O.L.-Doc. 614, Exh. 149) (the plans for 1945 provided for an increase to only 17 %).
- b) The share of the I.G. in these 13 % of the acetylene and ethylene consumption for powder, explosives, materials for chemical warfare and their preliminary products amounts to: "Less than a third, that is 4 %" while the share of the I.G. in the entire German acetylene and ethylene production amounted to 2/3, that is 66 %.

This is how the alleged participation in the preparation of a war of aggression looks in reality.

Already the characteristic of the chemical industry processing acethylene, and as its representative Otto AMBROS, established "its peace- economic orientation..... and their interests in this direction" (O.A.Doc. 614, Exh. 149, figure 3)

Otto AMBROS was concerned with the meeting of civilian requirements, the rising of the standard of living and with the technical progress for the welfare of all concerned.

This was for him "in accordance with his personality as technician, inspiration and satisfaction, but not the possibility to use these products for the Army or still worse for a war of aggression (O. A. Doc. 607, Exh. 27).

Chemical Warfare agents.

A layman in chemical matters or the outside observer may consider it to be natural that the field of chemical warfare agents is being separated from the chemical products and is being treated as a special field. To the chemical mind, however, chemical warfare agents appear only as a few of the many thousand chemical compounds which are discovered or invented in the course of experimental research and which, as such, are just as neutral as the rest of them. Their characteristic highly toxic qualities are only by-effects, which are accepted for the time being, but on account of their importance in other respects or their valuable qualities, are used for other purposes, such as combatting of vermin or medical-therapeutical preparations. The research method of chemistry has no intention of searching for a certain purpose and to make such a purpose the basis of its experiments and laboratory research, and still less to produce a final product relevant especially to military purposes. This possibility, of course may be rooted in the material itself, but the making available for these purposes is handled by another branch.

This scheme of things should not be disregarded if one considers development and production of chemical warfare agent under the point of view of preparation and planning of a war of aggression.

- I.) There is no international prohibition for the development and production of chemical warfare agents as such. This can be deducted from the wording of the declaration of the first Hague Peace Conference, according to which "the contracting parties agreed to forbid the employment of projectiles having for their purpose the diffusion of asphyxiating or deleterious gases". The Geneva Convention of 8 February 1922 too prohibited only "the use in war of asphyxiating, poisonous or other gases, and of bacteriological methods of warfare".

- 2 -

This limitation of the prohibition to the actual application in war had its well-founded historical, political and technical reasons, and it is not necessary to discuss them here in detail. This agreement of 1928 was not ratified by the United States (cf. OL 720, Exh. 170, book 7A, page 55 ff). For the rest, this conception corresponds to that of the leading German military offices (interrogation Dr. W/HN German transcript 11621 English page 11483/84).

II. Chemical warfare agents were not actually used during world War II.

It may be presupposed that the Court is aware of this fact and in addition it is confirmed by the expert witness ELIAS. (cf. also C/-Doc. 110/S page 29 ff. volume I/ Exh. 42)

III. The development and production of chemical warfare agents

prior to the outbreak of the war was considered to be a part of defensive rearmament.

The development and production of chemical warfare agents prior to the war can therefore be of importance as evidence only as far as participation therein could be regarded as a participation in an aggressive rearmament with the aim to prepare for an aggressive war.

- 1) In spite of the Geneva Convention all States continued with the expansion of the production of poison gases. AMBROS considered especially the production of lost gas^x to be a purely defensive measure. It is of importance that the foreign countries too did by no means stop rearmament in the field of chemical warfare agents. Already Paul BONCOUR the representative of France at the ratification of the Geneva Convention pointed out that even the signatory powers "continuent alors, dans la hantise de cette guerre épouv~~er~~table des préparatifs plus ou moins ouverts, plus ou moins secrets"

LOST GAS = MUSTARD GAS

and an American General too emphasized in 1941 the importance of the chemical rearmament as a defensive weapon by stating the following:

"Regardless of the treaties which exist between them, it is fully realized by all that the best insurance against such an attack lies not only in gas masks and protective clothing, but in the ability to retaliate immediately. We are well informed in the Military Intelligence Section of our Army of weapons, gases, and instructions for their use by all belligerents, and we have very considerable knowledge of the amounts and kinds of agents being manufactured and stored in the arsenals of Europe, ready for use". (OL 717 page 43 volume 7 a. Exh. 167).

"If the severest and most cruel features of chemical warfare are to be eliminated from wars yet to be fought, it will probably be attributable to the power of the individual states participating therein, through the possession of adequate equipment, to make dangerous the use by the enemy of what is happily shocking to the sensibilities of mankind."

OL Doc. 720 Exh. 170.

AMEROS had the very same points of view in connection with the German rearmament in the field of chemical warfare agents. In particular the lost gases, with which he worked prior to the war, even though only indirectly, in his capacity as chemist for the preliminary products on the acetylene basis, were not considered by AMEROS to be "dangerous gases, thus none of the strong poison gases", but "defensive gas, gas for protection" (transcript German page 8053 English page 7976). He did not connect their production and development with aggressive intentions but with the creation of defensive measures "an establishment like a fleet in being" (transcript German page 8072 English page 7997).

Still during the war, AMEROS, in a short lecture on the occasion of a meeting at the Main Committee Powder and Explosives emphasized:

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Our Wehrmacht activated the German chemical industry mainly for the defensive idea, the protection against chemical warfare agents.

But, when the aims of the military armament of our opponents became clear, German chemical industry too was forced to prepare for the active chemical warfare.

It would be unwise to underestimate the chemical potential of our opponents, the Russians and in particular the Americans. A chemistry of the aliphates which was highly developed during the last years especially in America could become the basis for a considerable production of chemical warfare agents. (NI 14071 Exh. 1919).

Thus AMBROS believed to be justified in this interpretation, because he had learned from publications and other informations that the foreign countries too were well prepared in the field of chemical warfare agents.

Thus for instance the leading firm in the field of further processing of preliminary products of lost gas (the firm Iker-Gesellschaft at Berlin) received in 1937 requests from foreign countries for the erection of installations for the production of chemical warfare agents. (NI 5692 Exh. 627 volume 35 page ⁷¹~~446~~, NI 5693 Exh. 628, volume 35, page ³³~~447~~).

For the rest, this fact was generally known in professional circles. This was caused by publications in professional magazines which, as for instance the News Edition of the Chemical Engineering News, stated openly that the USA were not bound to any treaty prohibiting the use of gas in war and that they had carried out enormous preparations for chemical warfare. "For many years and prior to 1941 the President of the Chem. Soc. has appointed members of the society to assist the Chemical Warfare Service to place a total of almost 800 different contracts with industrial firms. To be unprepared to retaliate with any form of weapon is to invite attack; war gases cannot be manufactured on short notice." (OA Exh. 167 OA 717)

In the same way KRAUCH, in his letter to General BECKER of 22 July 1938, (NI 8840 Exh. 448, volume 21 page ¹²~~40~~) stated that they knew that

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"the countries abroad, especially England and America worked for about 2 years intensively on the expansion of their production of chemical warfare agents" and that in this connection "the foreign countries intend in most cases for their own purposes demands which exceed considerably the production at the end of the war (this refers to 1918)".

This assumption is being confirmed by nobody less than General PITTERRON then Secretary of War, who in 1946 in the "Chemical and Engineering News" stated the following with regard to the "High State of preparedness" of the US:

"was ready to retaliate in hooping quantity is attested by the great stocks of gas, we have for use and the stand by facilities ready to go into heavy production of G-8ay had materialized". (sic.translator) "Chemical experts worked with us in developing toxic agents as good as, if not better than, those we found in the hands of the enemy. I have heard it said that the Germans had a supergas capable of penetrating American masks, the truth is that the mask furnished to every American fighting man insured protection against every gas found in Germany" (OA Doc. 718 volume 7 A page 48) Exh. 165.

2) AMBROS does not come in touch with preliminary products for poison gases out of his own initiative, but this is a logical result of his work as ethylene expert. For the question, in as far as even the indirect contact of AMBROS with the program for chemical warfare agents of the military and political leadership can be regarded as a participation in the planning and preparation of a war of aggression, the fact is important that AMBROS, as leading chemist and acknowledged expert of ethylene chemistry, that is the necessary preliminary products for all kinds of lost gas, was logically forced to come in touch with this program. (transcript German page 8041, English page 7966).

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Until 1935 Dr. AMEROS had, neither through his training at the University nor through his industrial training any contact with the questions of poison gases or other toxic materials. His position of chief of the group of intermediate products in the I.G. plant Ludwigshafen resulted in the fact that he at that time became by and by the first expert in the ethylene field.-

When the German Wehrmacht, in the course of rearmament, intended to take up also the production of mustard gas, they approached the I.G. Ludwigshafen in 1934/35; it was in these works that the German ethylene chemistry was being developed. At that time we did not find them willing to co-operate and the High Command of the Army therefore contacted the firms of Luer (Berlin) and Th. Goldschmidt. This led to the founding of Orgasid which set up the mustard gas plant on the site of the Pukau Chemical Factory Immendorf. Then, at the insistence of the High Command of the Army, the I.G. had to make available their process for the manufacture of the preliminary products thiodiglycol from spirit ethylene, while it was arranged that DECE/ should undertake the production of mustard gas". (Exhibit OL 152) O/ 702. AMEROS, who was a leading technician of modern organic chemistry, regarded the entire ethylene chemistry as basis for mustard gas. He was prepared to further new processes for the production of preliminary products which seemed to be important but closed the plant Ludwigshafen against the starting of the production of thiodiglycol (preliminary product for mustard gas) on a large scale demanded by the Wehrmacht, and refused strictly a production of chemical warfare agents." (C/-Exh. 145 OL 610)

The so-called ethylene tree was introduced for the clarification of these logical conclusions based on the dependence of one chemical compound upon the other. (OL 2). O/ Exh. 2. This tree shows that thiodiglycol, an intermediate product for lost gases, just like ethanolemine for N-lost and the DL originate from ethylene. (transcript German page 8052, English page 7978).

CLOSING BRIEF DUBOS

The importance of these chemical derivations is shown by the fact that the prosecution made a mistake in the construction of its arguments, as, for instance, it does not recognize oxol as a preliminary product for mustard gas, but considers oxol as mustard gas proper, in spite of the fact that it is identical with thiodiglycol (cf. ELI/S interrogation page 1362, English page 1367, Contrary to Trial-letter No. I page ..391) In spite of the fact that article 1 of prosecution exhibit 351 NI 5681 volume 13 page 13, English page 45, shows clearly the field covered by agreement "production of ethylene oxide from spirit and the further processing of ethylene oxide to polyglycol II", the prosecution in trial brief 4 page 39, when establishing the task, extends in article 2 the text "to inclusive the experimental works" for the production of dichloroethylenesulfid (mustard gas). In this field the persons negotiating on behalf of the I.G. had no experiences whatsoever, but left this field to the Orgacid G.m.b.H. Berlin, as shown by the letter of 9 August 1935.

NI 5681 Exh. 351 volume 13 English page 45.

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- 3) The preliminary products concerned are mainly of importance for peace time economy and were processed as such by IGBDS.

The preliminary products through which IGBDS came in touch with the chemical warfare agents were therefore in reality products which have long been known as commercial products, although they were produced in Germany only by I.G. Farbenindustrie factories. For this reason the Army Ordnance Office, as the employer of the chemical warfare agents plant, could not dispense with the co-operation of I.G. in the designing, construction and operation of the preliminary products plant". (O/L 705, Exh. 153, figure 5 volume 71/ page 18).

It is characteristic for the attitude of the I.G. which was completely directed towards peace time economy that thiodiglycol "was sold by I.G. under the trade name glyocin 2 as a valuable auxiliary for the printing of textiles." (O/L 701 Exh. 151, volume 7 1, page 2) By the way thiodiglycol as such is today again sold on the commercial market.

As preliminary product it is harmless and only by further processing with hydrochloric acid it becomes a poison gas", (transcript page 8053/ English 7979.

For the production of the new poison gases Tabun and Sarin IGBDS was consulted - and that only after the outbreak of the war - because its production "is, from the chemical point of view, extremely difficult. This process is connected with nearly all the complicated operations of ~~compression~~ under high pressure, corrosion etc.. It is an extremely difficult preliminary product chemistry". (Transcript page 8071 = 7996/7997.

- 4.) It was requested by the Reich that IGBDS be consulted. The Reich "demanded" that I.G. made its technical experiences available.
(O/L-Doc. 701, Exh. 151, volume 7 1, page 2) and others.

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The commissions were placed in the form of preliminary orders (Vorbescheid). The speed and manner of the carrying out were ordered and supervised by military offices. Even with regard to the production program I.G. received corresponding orders from the OKH (OI 611 Exh. 146, volume 6a).

Priority grades, supervision by special agents of the OKH or the Reich Office for Economic Expansion (OI Doc. 703, Exh. 159 volume 74 page 10).

The document of the prosecution NI 7424 Exh. 444 volume 21 page 1 of 18 July "measures issued on the basis of the commission of 15 July 1938 for the carrying out of the new military economic supplementary plant" is for instance a compilation of such official orders, which could simply not be carried out to such an extent. As it was "Top secret" AMBROS received no knowledge of this note, nor was the name of the person who issued the orders mentioned.

That AMBROS was unable to refuse these governmental orders is clear if one takes into consideration the situation which prevailed in Germany between 1933/45 and this is again confirmed in OI-Doc. 330, Exh. 210.

"After remonstrations by higher authorities and by having pointed out to them that after all Germany had to be in a position to defend herself, did the gentlemen (ter MEER and AMBROS) consent to the construction of government-owned installations by technical experts of the I.G." (OI-Exh. 142) OI Doc. 607.

IV. Prior to the outbreak of the war the I.G. had a pronounced negative and reserved attitude towards the question of chemical warfare agents.

It is an unusual occurrence that the leading gentlemen of the I.G. refused to co-operate in this field. "Dr. ter MEER and Dr. AMBROS refused a direct participation of their firm in this field on principle. (OI Doc. 607, Exh. 142, page 20.)

CLOSING BRIEF ALBROS

In connection with the start of the rearmament in the field of chemical warfare agents W/HN states that "we were forced - as the I.G. did not want to co-operate to interpolate the Orgacid Gesellschaft, the Kali-Chemi etc." Transcript page 11615, English page 11477/78.

In NI-5692/ Exh. 627, volume 35 page 146 English page 71, this attitude is expressed by the following wording. "As before, the I.G. wanted to keep aloof from the installations for chemical warfare agents. There was no change in their decision which it had made sometime previously." This was in May 1937.

In view of this negative attitude the OKH, at the beginning, turned to other firms (Luer and Goldschmidt) for the production of lost. The I.G., however, "on the urgent request of the OKH had to make available its processes for the production of the preliminary product thiodiglycol from spirit ethylene" (O/L Document 702 page 5, Exh. 152, figure 1 volume 74) "In any case, it is an historical fact that the efforts of the High Command of the Army in the field of the development and production of chemical warfare agents were in no way supported and sponsored by I.G. to the extent that could be expected of such a productive Concern." (O/L 703 page 10, volume 74 Exh. 159)

For this reason the Army Ordnance Office, especially We Pruef 9, "saw itself compelled to urge Dr. ALBROS repeatedly by word of mouth and in writing to speed up the filling of orders which were placed by Army High Command with the works under his technical supervision." (O/L 703, page 10 Exh. 159)

"This attitude was repeatedly severely criticised by the Army Ordnance Office. (Exh. 659, NI 10595, volume 36, page 149, English page 112.

- 1) An example for the lack of initiative of the I.G. is the merger of the Montan installation with the I.G. plant at Huels.

In this connection, the erection of the Montan installation of the Buna plant at Huels is especially significant. The history of the erection of especially this plant was completely misunderstood by the prosecution. The prosecution used the statement of the witness WEIDENHACK, which had not been proved and which lacks all knowledge of the matter proper, (Exh. 673, MI-9192, volume 36, page 83 English page 33) and asserts that the initiative at Huels for the carrying out of the intended construction of the Montan installation originated from the I.G. The I.G. "had planned" the production of intermediate products for mustard gas (Trial letter I, page 40). In this case, however, exactly the opposite happened as is stated by the expert witness EBHANN in MI 10595, Exh. 659, figure 3 page 160, volume 36 page 145 English page 112) and in his interrogation (Transcript page 1709 ff., English page 1725 ff.

In the Buna process at Huels conducted on the basis of the electrical arc, for which the waste gases of the ~~hydrogenation~~ ^{hydrogenation} installation were used, apart from the desired acetylene, ethylene is an inevitable by-product. This ethylene source induced the OGH to attach to it a military Montan installation for the production of ethylene oxide, or diglycol or the derivations, thiodiglycol, as preliminary product for lost. (cf. transcript page 8069) / 7994 English.)

By this merger of the Montan installation by order of the Reich "the production capacity of the plant Huels was influenced decisively". This cross section expansion required the best possible utilization in peace time for reasons of rentability. "Such" possibility, however, could not be found immediately but only after a few years. Therefore, the emergency installation was used for the time being for the compiling of stocks.

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However, it is significant for the attitude of the I.G. that it did not base its calculations on the utilization of these products in war time, or worse, hoped for such a war, but that on the contrary it wanted to open a market for the ethylene oxide produced in the emergency installation or for another ethylene product and this market should "if possible be located in foreign countries".

(Exh. 559, NI-7769, volume 28, page ¹³⁵~~134~~). English page 135. Only if one takes into consideration this scheme of things it will be possible to explain "the ordering of deliveries of the production of two years amounting to 8000 tons of ethylene oxide for each year

..... which were to be transformed in Huels into diglycol and oxole" (NI-7380/Exh. 597, book 3rd, page 183 English page 61). The products too were only preliminary products. The strict separation from the production of chemical warfare agents becomes especially clear in Exh. 597, NI-7380 volume 33, page 183 English page 61, a letter of AMBROS to the OKW of 18 May 1938, because the I.G. demands the "construction drawings for the esterization installation, DI installation" from the Auer-Gesellschaft. This shows that the I.G. was not in the possession of the required chemical formula for the further processing to lost.

Moreover the I.G. knew to it that the Montan installation Huels was purposely kept separate from the rest of the factory Huels which supplied only civilian demands, not only with regard to jurisdiction and technical matters but also as far as space was concerned.

(Of 712, volume 7 & Exh. 162, transcript 8070, English page 7996).

2) In the other works which were under the technical supervision of AMBROS too, this intention to separate the plants is obvious.

- a) Contrary to the wrong interpretation of document NI 6764 Exh. 623 volume 35, German page 59, English page 59) by the prosecution, the plant WACHSEL was not build in order to create a raw material basis for the further processing of materials for chemical warfare agents, but in order to meet the increasing demands for ethylene oxide made by peace time economy, and especially in order to be able to go into exports on a cheap basis. Transcript German page 8047 English page 7974 and Exh. 114 NI 4490 volume 5 ~~page~~ English page 125).

CLOSING BRIEF HERBOS

Exhibit 623 NI 6764 volume 35 German page 59, English page 59 is the source for HERBOS' lecture on ethylene before the TEL in 1936 (OA 603 Exh. 138, volume 6 I S 10/11) in which the reasons for plant 7706EL are explained.

- b) Even in plant Landorf, which does not belong to I.G. ethylene oxide is being manufactured on the advice of the I.G. in order to be able to produce glycerine-nitrate. Thus the preliminary product, contrary to the original purpose of this plant as a plant for the production of chemical warfare agents is, on the initiative of the I.G., not being used for the production of lost, but is being used for peace time economy.

NI 4484 figure 3 Exh. 626 book 35, page 145, English page 68 and transcript German page 8061, English page 7986).

- c) HERBOS refuses to co-operate in the erection of experimental installation for the production of DL. In general HERBOS' attitude shows again and again that he endeavors to keep the I.G. aloof from the further processing of preliminary products to chemical warfare agents. It has to be mentioned here, that to the annoyance of the Army Ordnance Office neither Ludwigshafen nor Schkopau were prepared to take over the English Levinstain-process for the production of direct lost (DL), which was highly important for reasons connected with raw materials. None of these two plants has ever started experiments in this direction. Neither was the plan, to connect a central ethylene concentration at Sodingen with a DL experimental installation accepted by Ludwigshafen. It has surely to be attributed to this lack of preparedness for co-operation in time on this problem that the large DL installation in Landorf, which was later planned and constructed by another firm, did by no means satisfy the demands of the Wehrmacht in regard to the completely insufficient quality of the production turned out there.

CLOSING BRIEF JEBROS

In case chemical warfare would have started, this would have caused that the biggest German installation for the production of chemical warfare agents would have been unable to produce, a fact for which the government would doubtlessly have made the I.G. responsible.

d) The fact that the prosecution believes^{to} be able to confront a witness of the defense, Dr. ZIMM, with document MT 14257, Sch. 2314, book 94, shows clearly to what extent this situation is misunderstood by the prosecution. The document refers to project Perstoff installation. But especially here it becomes evident that JEBROS does not want to oblige the OWH. The OWH, through Prof. FROEHLICH, became interested in Perstoff and turned to the I.G., which had produced Perstoff during the first world war and which, in view of work on basic products in connection with purely peace time products, had gained experience in this field. But FROEHLICH states: "In this case we should remain true to our policy which we adopted in case of former projects, namely that the I.G. makes available its experiences to the new installation." He is against attaching the emergency installation to I.G. Ludwigshafen (para. 1) and as argument he states: "If this is supposed to be an emergency installation on a new site, I (JEBROS) would like to recommend that the I.G. does not concern itself with this problem in view of the huge amount of work in other fields," this was in July 1939.

(cf. also transcript page 11694, English page 11592).

e) It can be understood that the prosecution has difficulties to find its way in this complicated chemical field.

CERTIFICATE OF TRANSLATION

11 June 1948

I, S.A. Hamburger, ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document CLOSING BRIEF AMEROS.

S.A. Hamburger

ETO 20062.

If e.g. it introduces Exh. 2316 MI 14256, which concerns the production of Hexachloroethane, then this is a matter of a "smoke agent" (therefore no chemical warfare and aggressive agents but agents for screening oneself against visibility and for camouflaging.)

The whole behavior of Ambros is the more remarkable since the rearmament in the field of war gas could have been, of course, accelerated, if either the preliminary products would have been produced by the I.G. and supplied to the chemical warfare agents factories to be manufactured into war gas or even more if the chemical warfare agents factories would have been, like in the I. World War, joined with old I.G. plants. The I.G., however, understood to elude both methods, although with considerable difficulties, until the outbreak of the war.

- 3.) The Orgacid, in particular, biggest producer of chemical warfare agents before the war, had nothing to do with the I.G. Ambros refused any form of participation in the Orgacid. In connection with this it has to be told that the creation of Orgacid, sole producer of C-Loat was only the result of I.G. refusal to engage in the field of chemical warfare. Furthermore that Orgacid is a firm absolutely without connection with the I.G. The Prosecution tries again and again to claim that the I.G. had nevertheless some influence on Orgacid, in order to be able to charge at all the I.G. via Orgacid with a participation, worth mentioning, in the development and production of chemical warfare agents before the war. These endeavours of the Prosecution, however, have collapsed completely during the Trial:

- a) The I.G. was not represented either in the Aufsichtsrat or in the management of the Orgacid, nor had the I.G. a share in the

capital and had nothing to do with the technical management
 (OA conclusion from NI-5681 / Exh.351, Vol.13, page ⁴⁵~~125~~, OA Exh.
 153 particularly when arguing with exh.621 NI 5669 Vol.35 p.....
 Engl. p.30.) In Exh.659 NI-10595 No.31, Vol.36, p.152, Engl.
 p.112 the history of the development and the legal structure
 of the Orgacid is presented correctly and in a detailed manner:
 "The firm IGFA (Auer Corporation) possessed a process for the
 technical production of Oxol-Lost. For this reason it was
 commissioned with the construction of the first chemical warfare
 plant, the more so since the I.G. showed at this time lack of
 interest."

"The help of the I.G. became nevertheless necessary for the
 construction of the Oxol plant with its first elements ethylene
 and ethylene oxide." Because the I.G. as the only German firm
 produced "Oxol privately for German and foreign demands."

"The I.G. had to be obliged by the Wehrmacht, i.e. the Army
 Ordnance, to put its technical knowledge and experience at the
 disposal of the Orgacid for the construction and operation of
 the preliminary product plant." (p.154).

- b) Documents submitted by the Prosecution in the Orgacid matters
 can only confirm the absolute independence of this firm from
the I.G.

The correspondence of the Legal Department Ludwigshafen with
 the firm Goldschmidt, a partner of Orgacid, about deliveries
 of chlorine and positions in the Aufsichtsrat (III 7274, Exh.
 624, Vol.35, Engl. p.62, ^{N3}7275, Exh.625, Vol.35 Engl.p.64, ^{N3}
 4484 Exh.626 Vol.35, Engl.p.68) dates from 1937, did not show
 any results and therefore is irrelevant. It rather confirms
 that it was without result, that the I.G. in fact had no legal
 or actual influence on the Orgacid. .

Likewise the attempts to come to a closer collaboration between the Auer Corporation (also a partner of the Orgacid) and the I.G. remained without effect and besides were always initiated by the other party. (NI 4707, Exh.629, Vol.35, Engl.p.75).

- c) Moreover the "technical collaboration" (NI 14252, Exh.2318) should not be mistaken for "technical management" (NI-5669, Ch.621, Vol.35, Engl.p.30 i.e. an unauthoritative note in the file made by the completely confounded and in these matters incompetent Central Finance Administration). The technical collaboration resulted necessarily through the preliminary product chemistry and the respective experiences which had been obtained in the preliminary product processes in quite another connection and in a purely peace-time economy way. The I.G. had therefore to yield -free of charge- "its present and future processes and experiences for the production of ethylene oxide from alcohol and for the manufacture of the ethylene oxide into polyglycol M." (Contract between the I.G. and the Orgacid from August 1935, par. 4-NI 5681, Exh.351, Vol.13, p.⁴⁵ 429) Polyglycol M is Oxol, therefore a preliminary product of Lost. To this alone extended the duty to give "chemical and technical advice", incl. insurance work" (Par.2). There can be absolutely no question of the Orgacid being "managed" by the I.G. (trial brief I/41 a note 1). According to explicit stipulations of the quoted contract the management was to be performed by the Orgacid (Exh.351, par.1 N 5681 Vol.13 Engl. p.45).

Also document NI 14014, exh.2319, submitted by the Prosecution during the rebuttal reproduces only discussions and unauthoritative opinions of a chemist which did not bring forth any agreement and express one-sided wishes of the Army Ordnance and of Dr. Engelhard from the Orgacid. AMBROS on the other hand

from the very beginning stressed the point that "an unlimited collaboration" (with the Orgacid) "is not possible". (Exh.2319, Although the problem of a creation of a new corporation was discussed between Dr. Engelhardt and the I.G., this suggestion was not received favorably by Ambros. (Exh.2314, NI 14257, No.2 concerning D-Isot). As a matter of fact it never happened. Just the stipulation "that when the Orgacid will be joined the I.G. shall get an insight into and influence on these installations", "e.g. in Amendorf and that then nothing can be constructed or operated without knowledge of the I.G." (Exh. 2314, NI 14257, p.5, No.1) is a proof that at least until then (23 February 1939) it had not been so. This did not change since the I.G. did not join the Orgacid.

These facts should be sufficiently known to the Prosecution from excerpts from files, the correspondence between Orgacid and I.G. in spring 1937 and for the Prosecution by Mr. v. Heyder at the Doc. Center in Griesheim on 5 February 1948. In a letter of the L K Dept. In. dated 5 April 1937 and Dr. Engelhardt (Orgacid) the I.G. "refuses" categorically to take over the management.

- 4.) The will to remain detached is also shown by the use ^{of} Anorgana, Luranil and even more so of Monturan as intermediary agencies. AMBROS pursued a definite intention to remain detached also with the Anorgana (German Rec. p.8003, Engl.Rec.p.7899). "When the Reich in 1940/41 asked the I.G. within the contractual stipulations to construct and to operate special plants belonging to the Reich the Anorgana Ltd. was used by the I.G. as a firm operating these Reich installations, since the I.G. for certain reasons did not want to take over itself these tasks."

(O.A.doc.507, Exh.124, p.31). These certain reasons were that the I.G. "was not suitable for performing military tasks".

(German Rec. p.8003, Engl.Rec.7890).

"As the tasks of Anorgana concerned exclusively the administration of Reich plants, and as, consequently, the Reich insisted on having some voice in the management, a Aufsichtsrat was formed in the company to which the Reich also sent several representatives" (O.A.Doc.507, l.c., Exh.124).

Of course the representatives of the OKH were members of the Aufsichtsrat of this lease company "with full responsibility... as those who gave commissions and were owners"(German Rec.. p.8003, Engl. p.7892).

The legal structure of the Luranil is shown by exhibit 355 NI 4988 Vol.13 p.59 and OA Doc.506, Exh.123, Vol. V A p.28.

"The company was set up exclusively for the purpose of carrying out various building projects for the Reich, the technical planning, design and execution of which I.G. had to assume for the years 1940 and after as stipulated by agreement, but the execution of which I.G.Farben themselves did not want to take over for certain reasons" (O.A.Doc.506, Exh.123, p.28). Here too the "certain" reasons are the same as in the case of Anorgana. The will to remain detached is confirmed by the fact that "the construction of these buildings for the OKH was to be carried out free of charge, i.e. without any payment for their work and without any profit, except for re-inbursement of their actual expenses which, for the sake of simplifying the accounts, were fixed at a lump sum for overhead expenses based on the building costs."

Transfer of these building projects to Luranil had, in addition to the purpose of distance, the great advantage administratively for I.G. that thereby a clear separation of their own extensive building projects from those specially carried out at the expense of the Reich was achieved.

Later on the I.G. succeeded even, in spite of considerable difficulties, to create a managing corporation in which the I.G. had to have a share with Montane Corp, belonging to the Reich, in a 50:50 ratio and so could remain even more detached. ("Turon" or "Monturon" in the case of the Seewerk Falkenhagen, August 1943, NI-7377, Tsch.645, Vol.36, German p.43, Engl.p.37).

V) AMEROS did neither invent nor develop chemical warfare agents.

At any rate the fact that AMEROS kept aloof and the effects of this fact in the field of chemical warfare agents are remarkable in so far as thus he did not participate either in their development or production before the war in a degree worth mentioning. This in absolute contrast to the Prosecution's allegations.

1) Before the war AMEROS came in contact only with ethylene derivatives.

At first AMEROS as ethylene chemist had until the outbreak of the war only contact with such chemical warfare agents, namely indirectly through the preliminary products which are ethylene derivatives i.e. sorts of Lost. They are not, however, his invention and were not developed by him.

a) Oxol-Lost as it was produced is an invention dating from the 19th century (Lost = Loewel & Steinkopf, producers during World War I).

b) The process H-Lost was described and patented already by Kyl-Ward from Hercules Powder in USA. (OA Doc 2 Vol.7, OA 706 Exh.154). It was worked on in England, too, in 1935 at the latest (OA Doc. 707, Exh.155, Vol.VII A S 22/23). The history of the development

of N-Lost is described in OA Doc.702 Exh.152, Vol.VIII,A No.2 p.4/6). German patents were already applied for, also in 1935 (OA Doc.708 p.24/28 Exh.156), in Germany they were even made available for foreign registrations (OA Doc.709 Vol.VII A p.29 Exh.157) and were in invention competition with countless foreign patents (OA Doc.710 Doc.Exh.158, Vol.VII A, p.30).

c) Trichloroethylene.

Since the intermediate product has the effect of poisonous gas the IG in this case gives away the final product too. This is the meaning of the contract which was submitted during rebuttal as *Exh 2246* NI 14250. The CKH wants an experimental plant and the I.G. does not want to construct this installation in Ludwigshafen. Therefore Orgacid was commissioned with it. In par.8 of the contract it is explicitly stipulated that Orgacid Ltd., Berlin is commissioned with the construction of the UP- ...- (N-Lost) installations.

d) The M-Lost is no actual invention in the chemical-technical meaning; it resulted simply from a pollution of the old Lost. Cf. Zins record. The simple impulse for it was taken over by the CKH and there elaborated into a patent. (OA Doc.702 Exh.152 Vol.7,p.4/6). M-Lost was practically without any significance, CKH preferred the Bo-Lost which was better (British origin NI 2379 Exh.255 Vol. 1Q p.181 Engl.p.15).

e) Direct-Lost was strived at by the Army Ordnance for reasons of raw materials economy. The technical progress consisted merely in a simplification of the process to get directly from ethylene

to Lost. It is based on the English Leivinstein process (OA doc.703 Exh.159, vol.VII A p.7/10). German research agencies did not succeed until the outbreak of the war to develop a process technically practical which could be used in large production. Until the outbreak of the war the I.G. was not in the possession of such a process.

To be sure the Reich agencies tried rather hard to get it and made purely hypothetical plannings which prove only what slight authority there was on the subject (proof: Ambros had nothing to do with the development of this process, he left it to the OKW, which commissioned Leverkusen with it. This is confirmed by NI 7425, exh.640 vol.36 p. 11. Engl.p.10, a letter dated 28 September 1939, in which Leverkusen confirms that it takes over the planning, construction and operation of the D-Lost installation.

f) The history of Tabun produced in Dyhernfurth during the war has been sufficiently explained in Pres.Doc. exh.655 vol.35 NI 9772 Engl.p.86). Tabun was developed eventually from an insecticide (Golan) of the I.G.laboratories in Kibberfeld into a chemical warfare agent by the research laboratories of Ordnance Res.9 in Spandau. (OA 713 No.4 exh.163). There was never a development research work done in Dyhernfurth itself. Dyhernfurth (NI 6131 = Exh.357, vol. 35 p.54, Engl. p.68) and Falkenhagen (NI 4994 Exh.646 vol.36 p.53 L Engl.p.42) were installations of the Montane owned by the Reich; they were operated by the Anorgana on lease by order and on imposed commission of the Reich.

g) Sarin, a chemical warfare agent, 7 times more effective than Tabun, originates as chemical warfare agent from the Army Laboratories in Spandau (Res.p.8073 Engl.p.7999). It was supposed to be produced in Falkenhagen during the war. But it was not produced after all (cf. NI 10557 Exh.619 vol.35/ ~~p.2-80~~ Engl.p.10...)

Both compounds go back to old scientific discoveries; substances identical with Tabun had been discovered by Michaelis already in 1902 (OA doc. 714 Exh. 164 vol. VIIA p. 38/39), compounds related to Sarin had been described by Lango ^{and} by Krueger already in 1932. (OA 715 exh. 165 vol. VII A p. 40). A Sarin type was accepted and published as a patent as an insecticide already in 1938 (OA 716 Exh. 166 vol. VII A p. 41/42).

VI. In comparison with planned figures unfit to be put into effect for which the I.G. cannot be responsible, and reckonings devoid of authority, the actual demonstrable share of the I.G. in the chemical warfare agents program of army agencies is extremely small.

These facts are by no means amazing. Simultaneous discoveries of such highly toxic substances in the entire world are in the nature of chemistry in which such developments happen at the same time. All chemists just look for a new intermediary product, e.g. a washing substance or an insecticide and military authorities use this chemical progress for their purposes (cf. Doc. 3063 Engl. p. 7986). Therefore in general there can be no question of an initiative of the chemists or of a culpable participation in the development and production of chemical warfare agents. On 1 September 1939 only a small stock had been produced by firms outside of the I.G.; also the production capacity was too small for the military command at the outbreak of the war. For this reason the military command forced the construction of more chemical warfare agents installations by all means. Because there was "only 10% agents of the needed amount of chemical warfare agents" there could be no question to wage an aggressive war." (B-25 Engl. p. 11488 - cross examination of the witness Dr. Zahr at the Army Ordnance).

- 1) The I.G. is not responsible for planning figures which could not be put into effect. The Prosecution does not want to admit that this was the actual situation at the outbreak of the war. It tries to ^{now} ~~darken~~ this situation by attempting to derive from planning figures, dating from before the war, a perceptible intent which would allow the conclusion that an aggressive war was being prepared. These planning figures which could not be put into effect represent hypothetical projects made at the council board, for which the industry cannot be made responsible and which AMEROS in particular Hoyer saw; in so far they may be disregarded at all as irrelevant (o.g. exh. 436 Rec. 8046 Engl. p. 7971 and Exh. 217, Exh. 634).

- 2) Not until the outbreak of the war was the I.G. ordered to adapt the DL process to production. Let us refer merely to the DL projects since the DL process could have become an important factor in the chemical warfare agents production only within the scope of Ambros' work. The Prosecution, though, did not succeed in proving that the projects of the DL process had been executed by AMEROS. The Prosecution proved in OA Dec. 711 Exh. 160 book 7a p. 31 by the Army commission that the old preliminary order (Vorbeschuld) for the plant Gendorf dated 5 July 1938 (OA 501 Exh. 118) was not extended until 27 September 1939 on "the construction of an installation with a production of 4000 tons per month Oil-D". Thus it is superfluous to refer to circumstantial evidence which had to be used during the trial particularly during the examination of witness Ehmann, (Rec/ p. 4530 ff Engl. p. 4509 ff) in order to prove that the project of DL production had become an imposed commission after the outbreak of the war.

- 3) The reconstruction of the DL installation in Gendorf in 1943 meant practically a considerable cutting-down of the war gas production. The development of the Direct-Lost production later on proves that the adaptation of the DL process to production was still premature in September 1939 since the process could not be tested until then.

In any case if the process would have been practicable, only Gendorf could have had produced DL until the end of the war. Nevertheless, however, AMEROS decided in 1943 to reconstruct completely the Gendorf ID installation, i.e. practically to cut down the decisive chemical warfare agents production during the war. It is understandable that for this attitude right during the war he was accused of sabotage by highest authorities. Rec. p.8067 AG Affidavit Dr. Gruber No. Q1 610 No.5 Exh.145 Engl. p.7991.

But in all these cases AMEROS made his decisions as a chemist and not according to military necessities or political expediency.

The DL installation was by the way also an installation of the Lantano owned by the Reich and was "operated" only by the I.G. through the Anorgana Ltd.

- 4) Official war-time charts give a true picture of the actual situation in the chemical warfare agents field. The I.G. participated only with about 7% in the chemical warfare agents production. The Prosecution could have easily gotten a proper picture of the actual situation in the field of chemical warfare agents without producing such witnesses, unprofessional and vague in their testimony, as among others

Murek (III 9619 Exh.668 vol.31 p.13 Engl. p.16) who admits himself that "the necessary documents were not available for him any more"

Hagner, (NI 8980 Exh.618 vol.35 p.3 Engl.p.3) who had to correct himself considerably during cross-examination, and NI 8922 Exh.169, Vol.7, Engl.p.47 ID

Zeidelhack (NI 9203 Exh.617 Vol.31 p.1 Engl.p.72) who had definitely limited the sources of his knowledge during cross-examination (Record German p/2323 Engl. p.2331) and who has been refuted by OA doc.704 Vol.VII A p.11/12 Exh.161,

There is a clear chart in NI 11105 giving a good survey of the planning and state of the actual chemical warfare agents production and capacities during the various years. It was submitted by the defense as OA 15 Exh.15 Vol.VII A p.58 ff and is supplemented by the chart of the entire German production of these agents OA 6 Exh.6 Vol.7 p.68. These charts speak for themselves.

They are contemporary documents from official agencies. They have been evaluated by the expert Dr. Zwann in OA 721 Exh.171 vol.VII A p.70/73. In comparison with this the evaluation of a part of document by Ritter in exh.1818 - NI 12724 vol.36 is incomplete as well as incorrect. Restrictions pertaining to it are disregarded. They prove that contrary to propagandistic allegations and phantastic reckonings (e.g. Struss who refers to a 95% share of the I.G.) the I.G. participated not with 95% but only with 7%. When adding plants operated by the I.G. but owned by the Reich one gets slightly more than 53%. This calculation refers to the one made by Struss of 1943. The average for all the years

makes this relation even more favorable because in 1943 on the one hand production was started in plants with which the I.G. had been commissioned after the beginning of the war and on the other hand the plant Stassfurt, independent from I.G., had to cut down its production because of accrued stocks. (OA 721 Exh.171 p.71.)

Before the war I.G.'s share was almost nought (III 12725). The absolutely as well as relatively low state of German armament in the field of chemical warfare agents and especially the slight participation of the I.G. therein is last but not least a merit of the defendant AMBROS.

VII. AMBROS could exert influence, particularly on the N-substance production only as a technical expert. The fact that the N-substance production in Falkenhagen was not increased is to be ascribed only to his reputation as a professional capacity. This had nothing to do with political influences, e.g. on the SS. A. was not supposed to, and could not, force the SS to give the I.G. an exclusive right to decide in Falkenhagen, the weight of his professional arguments tipped the scale.

(cf. record German p.8074, Engl.p.8000 to Exh.14 II 4043).

In this matter he was impressed in the first place by the anxiety that employment of the N-substance could result in a gas war.

Within the planned economy structure of the German economy in the 30ties Ambros ^{was} "merely" a privateer, a technical expert and only in this capacity, also a representative of a concern (which held an important position only in the chemical sector of the German industry, therefore of a small part-domain of the entire economy).

Furthermore the fact has to be emphasized again and again that AMBROS did not become member of the I.G. Farben Vorstand until 1938, i.e. he was not appointed until 1938 to the leading body of this concern, and that practically this did not change the scope of his activities within this concern in comparison with the period before 1938 when AMBROS had been a Prokurist, because AMBROS remained the outspoken chemist (cf. ter Meer). Neither was AMBROS chief of the chemical warfare agent factory Gendorf, Dyhernfurth, Falkenhagen, as the prosecution claims (Pros. appendix). Rather the chief in Gendorf was Dr. Wittwer, (OA Doc. 611 Exh. 146 vol. VI A, p. 28/29), in Dyhernfurth Dr. Palm (OA Doc. 713 Exh. 163 vol. VII A p. 35/36) and in Falkenhagen Dr. Gorr (vol. 36 p. 2 HI-7618 Exh. 648).

Neither was AMBROS an official of the state directing machine. He was neither an official of the Reich Office for Economy Expansion nor of the Ministry for Armaments and Munitions.

- 2) Otto AMBROS' position as chief of the Special Committee C to which he was not appointed until 1943, consisted in reporting to the Armament Supply Office (cf. OA 5 Exh. 5, OA 610 Exh. 145 Vol. VI A p. 24/27) (Rec. German p. 8075, Engl. p. 8001/02). The Special Committee C was a representative of commercial industry. Since in 1943 the types of chemical warfare agents had been already developed and the necessary installations had been already built the activities of the Special Committee C were practically restricted "to directing the existing raw materials within the limits of the fixed production assignments to the final production deemed important by the Armament Ministry" and "to reducing orders given by Mun 6 to a feasible measure" (cf. also Exh. 619 HI 10557 vol. 35 p. 20 Engl. p. 10 of Klenck Rec. German p. 2345/46 Engl. p. 2353).

VIII. It was AMBROS' decisive merit that there was no chemical warfare owing to his oral report to Hitler in May 1943.

In May 1943 Otto AMBROS was ordered to make an oral report to Hitler at his headquarters. AMBROS himself told in the witness stand in detail about the progress of this meeting (Record German p.8076, ff Engl.p.8002-8003). His statement emphasizes the objective character of this report to Hitler. This was the only possibility to decline their use by covering this refusal with warning objections.

Order to Otto AMBROS is confirmed by doc. HI-11105 Exh. OA 15

This is a resume of this report written by Otto AMBROS in February 1944. It is therefore a contemporary document. An unbiased observer must realize that AMBROS' sincere attitude shown there in a documentary manner is an absolutely defensive detail. This was the only possibility with a dictator.

War gas was never used by the Germans although in August 1944 suggestions were made by Hitler's entourage to start a gas war in last despair. AMBROS' attitude was the same as it had been in May 1943. The impression on Hitler had probably still it after effects and since "Speer's attitude was the same" as AMBROS' all fighters again were spared from "this terrible weapon" (cf. Rec. German p.8078, Engl. p.8004.)

E

GENERAL KNOWLEDGE AND RESPONSIBILITY

- I. AMEROS' position and activities within the I.G. do not permit any conclusions as to the preparation of an aggressive war.

In the foregoing sections it has been attempted to give a survey of Ambros' collaboration in the field of production of synthetic rubber, preliminary products for gun powder and explosives and of chemical warfare agents. This scope of work is only a part and not even the largest of Ambros' chemical life work (cf. testimony of witness Biedenkopf Prot. German p. 8218 f. Engl. p. ⁸¹⁴⁵ ~~8161~~, also witness Schnell, Prot. p. 8233, Engl. p. 8161). The Prosecution uses the quoted special tasks in order to examine the problem whether there can be any question at all of Ambros' auxiliary role in the preparation of an aggressive war. This consideration is one-sided but on the other hand it restricts the knowledge of Ambros.

- 1.) Ambros' proper scope of work does not give any clue for the knowledge about the Nazi government's criminal plans of aggression.

a) Not until 1 January 1938 was the chemist Ambros appointed to the Vorstand of the I.G. Farben. Until then his activities were not of the kind that he could get an influence or insight into the general conditions of the Ludwigshafen plant, let alone into the general conditions of the I.G. Farben, Inc. Much less did he have an insight into the broad outlines of I.G. policy, if there was any at all. (Q4-Dec.106, Exh. 24, vol. I A page 18.)

Closing Brief MEMOS

CERTIFICATE OF TRANSLATION

11 June 1948

I, Stanislaw S. FELDMAN, ETO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
ETO 1043.

Closing Brief AAROS

AAROS was until then only one of the Prokuristen of the I.G. without authority to take any decisions of his own in matters of greater importance. In order to do this, he had to secure the permission of the immediately superior Vorstand member who was competent for this.

b) But even after he had become a member of the Vorstand, no basic changes took place in AAROS's sphere of work, which was limited in the main to strictly chemical-technical tasks. (cf. e.g. his tasks in the bauxite field separated from those of his Spartenleiter for Meer, statement for Meer, transcript page 7800 English p. 30 7767). Only the range of his technical tasks kept on expanding, thus demanding in an increasing measure his concentration on these tasks of technical organization and of chemistry. One cannot speak of a general business policy at all. Naturally, AAROS gained a certain comprehensive insight into the development of production and the tasks of all I.G. branches through the Vorstand and the conferences. But in such a large combine it was impossible, if only on account of a lack of expert knowledge, to take up a position in regard to concrete individual issues concerning other fields of work, or to know ultimate reasons. The entire correspondence was carried on by the individual plants or branches. AAROS, in any case, is not responsible for this. His position was caused by his eminent chemical and technical qualifications and by the inner constitution of the I.G. combine.

c) At the same time, the expansion of the sphere of work into other fields meant a specialization of work, which precluded a comprehensive insight.

The explanation for this can be found in the first place in the fact that especially in the chemical industry, by its very nature, the competences are more rigidly delimited, and in the second place in the fact that such products which might have an important bearing on defense were subject to secrecy regulations and could, for this reason, not be brought without further ado to the knowledge of each Vorstand member, even within the same combine, as long as there was no material necessity for this.

II. AEGIS had no influence whatever on so-called production plans of the Reich Office or within the organization of the chemical industry.

The prosecution is aware of the weak points in regard to its position in the case of AEGIS in regard to count I of the indictment, for it tries, to construct, on the basis of a single document, AI 5687, Doc. 438, vol. 20, German page 77, English 130, an influence exerted by AEGIS on the re-organization of the chemical industry "for the adjustment to the requirements of war" (Trial Brief I).

AEGIS's work in the fields of work described above would have been no more sufficient than his position within the I.G.. However, Doc. 438, AI 5687 is entirely unsuitable for this argumentation of the prosecution, for various reasons.

- 1.) Doc. 438 merely represents the draft of a letter to KLAUKE and contains only a quickly jotted-down occasional expression of opinion.

In contrast to the interpretation of the prosecution that Doc. 438 represented a "letter" from AEGIS to KLAUKE, (transcript German page 214, English page 249), this document is only a quickly jotted-down draft which was never sent to the defendant KLAUKE (cf. KLAUKE examination transcript German page 5119, English p. 5097). The wording of this draft can, for this reason, not be evaluated, and moreover, it has not been proven whether and when the defendant KLAUKE did learn of the contents of this letter.

We now refer here to formal objections to this document when submitted, (transcript German page 915, 1072, and 1097, English page 950, 1106 and 1127).

A-2806 himself made detailed comments to this during his examination (transcript page 8039 e.g., English page 79-8). Let us merely establish that the text of the document too expresses the fact that A-2806 "upon Kautsch's request" "personally" describes his "impressions" "in regard to the "carrying-out" of the development program for chemical warfare agents and preliminary products for gun powder and explosives in Germany. In other words: A-2806 does not take up a position concerning a production program, as claimed by the prosecution, but only states his entirely subjective opinion which he himself describes in a different place of the same document as "a personal opinion".

2.) The draft of 27 June 1933 has no connections with the so-called "accelerated plan" of the Reich Office (Dok. 439 RI 8839 and Dok. 440 RI 8841 of 30 June 1933)

An evaluation of the draft of the letter Dok. 438 shows at once that it does not refer to any plans, but that it only criticizes very openly indeed the actual "carrying-out", as it was done at that time. This Dok. 438 only brings up negative examples, but no positive suggestions in regard to planning. A-2806 misleads "the cooperation between the Reich Office for Economy Expansion (Kautsch) and the many Offices of the Wehrmacht" (i.e. per.A), which means that A-2806 criticizes the competence disputes among the individual Berlin Offices, because they hinder the work of industry in every respect. This fact should have been very well known to Kautsch, from his own insight into the matter.

An analysis of the accelerated plan (Dok. 439 RI 8839, vol. 20, page 184 English) also shows that it goes back to older plans, especially to "the report of the Reich Office for Economy Expansion concerning the co-ordination of the production plan for powder, explosives, chemical warfare agents, including preliminary products" of 10 June 1933 (RI 8799, Dok. 436, vol. IX, English page 166). Thus the date of 27 June 1933 (Dok. 438) is really of no such great consequence as is stressed by the prosecution. (Transcript German p. 5118, English p. 5097).

Closing Brief KRAUS

These co-ordinated plans of production all have been established before 27 June 1938. The accelerated plan (Exh. 439) only differs from the older draftings by the fact that it "enlarges" "priorities" ... "accelerates", "starts up immediately" certain production (Exh. 439 1.c. p. 1 of the original). This is also underlined by the prosecution (Transcript p. 822, English p. 855). It forgets, however, to add that very KRAUS opposes in his draft Exh. 439 this "deadline operation" and refers to the "heavy burden imposed on the drafting offices" as well as to the "present loading of the German industry with numerous projects of the Four Year Plan and the promotion of exports" (Exh. 439 1.c. number 4 3). If KRAUS makes it appear that the creation of a "responsible office" is desirable in order to facilitate the negotiations between the industry and the authorities, this cannot be regarded either as "the same subject" (Transcript German page 822, English p. 855) which might establish a bridge to KRAUS's request "to establish a basically new and rigid combination of planning and execution resting in one single authority" (Exh. 440 II 8941). The same thoughts were repeatedly expressed by other quarters too and already in the Decree concerning the carrying-out of the Four Year Plan one finds the formulation that "the strict co-ordination of all competent authorities" "is required". (Ga Dec. 304, 223. 71, vol 3 A p. 11). Nor is the thought a new one when KRAUS thinks that it does not answer the purpose to erect installations on a "green field". In his own draft KRAUS mentions under number 4 3 that "the Reich Office is striving for a suitable joining of the emergency plant with factories already in existence." (Exh. 439 1.c). Thus it is not surprising if this Reich Office upholds this conception too in its accelerated plan (Exh. 439).

3.) There is no connection between KRAUS's draft of a letter and the activity of KRAUS as GaB chief, as well as with the Marshall Plan.

Aids from the question whether the quoted draft of a letter actually came to KRAUS's knowledge in this form and at that time, it can not be said that KRAUS suggested therein that "powers should be given to the defendant KRAUS in order to attain this end in view" (transcript German page 814, English page 849).

Closing Brief A-GaOS

A-GaOS's suggestion refers to the creation of a superior office "like the British Ministry of Defense" (Exh. 438 l.c. p. 5 of the original) This office "as the voice of the Wehrmacht and all competent Reich Ministries" was to have prevalence and the right of decision. Only the "execution" was to be handled "by the Office of the Four Year Plan, i.e. the Reich Office for Economy Expansion. (Exh. 438 l.c. p. 4). This proposition does not coincide in any way with the later appointment of Blawie as Gaebler. The so-called Karinball Plan (Exh. 445 PS 1436, vol. 21, English page ³ 147) of 15 July 1938 does not touch this matter at all, on the contrary, according to it "the present situation forbids, as a matter of principle, any changes in the organization" (Exh. 445, number 2 b). Nor could the Karinball Plan go into this matter, because it was based on Goering's autocratic directives, with whom A-GaOS never entered into contact at any time. The Karinball Plan, too, contained "in principle only that what had already been laid down by the GKS in its former plan". (GA Dec. 611, Exh. 149, vol. VIIa page 38). It is also to be noted that the "most rigid co-ordination", demanded in the Karinball Plan, ~~concerns~~ ^{concerns} production plants (Exh. 445, PS 1436, number 5) for which no positive suggestions in regard to organization were made by A-GaOS at all in his draft of 27 June 1938.

4.) The fact is decisive that A-GaOS had nothing to do with production programs and production plans.

The draft of a letter, Exh. 438, is, in contrast to the prosecution's interpretation, very apt to make clear the difference from the production plans of the Reich Offices. In Exh. 439 II 8639, Exh. 440, VI 8841, which in turn are based on the Four Year Plan Bible or other and older plans, like Exh. 436 II 8799, "production plans" are involved.

For this reason these plans include the planning of actual figures in regard to production and output in the respective fields (cf. e.g. Exh. 439 page 2 of the original e.g.) A-GaOS, in his suggestions, however, does not go into actual production figures at all. In his proper sphere of work e.g. bunk, he only mentions in one line that bottlenecks existed there on account of "the workload of the German machine construction plants". A striking light is thrown on A-GaOS's lack of influence in regard to the production program by an examination of the official project involving the direct mustard gas process:

Closing Brief AMROS

AMROS himself does not even mention D-Lost in Exh. 438, and, when he speaks of new types, he refers erroneously to mixed Lost and H Lost. (Exh. 438, page 5 of the original). In the accelerated plan, Exh. 439 II 8039, however, and in the co-ordination of this plan, Exh. 440, the so-called direct lost process takes up the major part of production planning. In Exh. 440, a direct lost gas production of 5200 tons per month is planned, and the first large pilot plant with a monthly output of 200 tons is planned for Emsle. (Exh. 440 l.c. number 3). In Exh. 439 p. 5 of the original, number 5, these new plans are taken up in different sections with the remark that it is necessary "to carry out the direct lost gas process with the greatest speed". "As the direct lost gas pilot plant planned for Emsle could not be put into operation till the spring of 1940," it is even intended "to establish this installation in a plant already in operation, e.g. in Schkopau". Exh. 440 l.c. number 3, in order to create the installations planned for the Saarland and Thuringia forest about one year ahead of schedule. (Exh. 439 l.c. p. 1).

II 06, however, only learned of these projects in 1939. The direct lost gas installations at Schkopau were no more started on than later on "the very urgent construction project" of a direct lost gas plant at Seedingen, which had also been brought to AMROS's attention by the LAMOS office on 26 August 1938 (LI 7428, Exh. 217, vol. 3, English page 57). The direct lost gas installation at Seedingen was never planned. When AMROS speaks on 10 February 1939 of a "pilot plant under construction at Seedingen" (Exh. 7431, Exh. 634, vol. 35, page 111), he is referring to the ethylene production plant.

Closing Brief LAMOS

Although LAMOS is commissioned "to investigate, as soon as possible, the possibilities for establishing output facilities for direct lost gas in the buildings of the closed-down plants Mont Cenis at Erna-Soddingen" (Exh. 53A SI 7431).

LAMOS had nothing to do with the direct lost gas process" in the way of experiments" (Transcript German page 8056, English page 7990), and, as has been shown, the I.G. had, prior to the outbreak of war, no direct lost gas process which could be suitably applied to manufacturing (cf. Exh. 449, SI 7445) a letter from A.U.M. (Loverhausen) to LAMOS, dated 28 September 1939 and transcript German page 8056, English page 7987.

The projects in such production plans of an official nature that are purely theoretical and often downright nonsensical, e.g. the planned installations in the Sauerland and the Teutoburg Forest (Transcript German page 8046, English page 7973). LAMOS had no influence on nor obviously, any authority for cooperating in such general plans. He did not even know about them. They were treated as "top secret" (e.g. Exh. 439, 440, 434) and were therefore necessarily limited to a small circle of offices more or less competent for the matter.

5.) The appointment of Dr. WITTMER to the office for Raw and Substitute Materials confirms the subordinate non-official position of LAMOS within the organizational structure of the German chemical industry.

WITTMER was requested, already in 1936, as an ethylene expert, by the Office for German Raw and Substitute Materials. In the letter of 16 December 1936 (SI 13521, Exh. 1918) LAMOS, still Prokurist at that time, informs his Spartenleiter for R.M. about this appointment. In the Office for Raw Materials, WITTMER was to deal with "the raw material questions" and "after the locations had been fixed (by the O.M.), to co-ordinate the respective projects". As ethylene expert -

Closing Brief AMROS

- who, however, had "not the faintest idea" about the manufacture of poison gases (transcript Gorman page 8169, English page 8094) - he only handled the preliminary products processes and the question, to what extent the raw material situation necessitated planning. "The production program for the production of chemical warfare agents was drafted by the GEF", as a number of chemical raw materials were necessary for this, for whose planning the Reich Office for Economy Expansion was competent; a harmonious agreement had to be reached between the GEF and the "referents" of the Reich Office (G. doc. 611 vol. 198, sect. 1). It was WITTEN's job to arrange this agreement. It is in the proper meaning of the delimitation of tasks for WITTEN in Dec. 1936, also of WITTEN's commission in the letter dated 18 May 1938 AI 14252 vol. 2318. The Army Ordnance Office was interested in WITTEN, because he was an expert (transcript examination Dr. GEF Gorman page 11614 and 11699, English page 11679, 11681 and 11686). KATZ's letter to State Secretary LO. III, dated 22 June 1938 (AI 8040, vol. 448 vol. 21, page ¹²~~55~~) confirms that the request for Dr. WITTEN was made upon the initiative of the Office for German Raw and Substitute Materials (i.e. later on, the Office for Economy Expansion). KATZ says that "he himself had procured his staff of co-workers in the first place from the industry involved, and that he had mentally trained them, this last year and a half, for those tasks (outlined in vol. 448) in order to anchor these principles of national economy, upheld here, in the participating industries" (vol. 448 i.e. page 55). A year and a half ago, prior to 22 June 1938, that was the exact time, the end of 1936, when WITTEN was called to Berlin. A letter from the Geheimes to the I.G. Farben, Ludwigshafen, dated 26 August 1936 (AI 7428, vol. 217, vol. VIII, English page 57), elucidates how strongly Dr. WITTEN's official position was established in the course of years in connection with private industry, of which AMROS was also considered a representative in his sphere of work.

Closing Brief AMEUS

according to this letter Dr. WITTE is commissioned "in agreement with the GHE Wa and GHE WStB", as technical advisor and supervisor of construction work of all projects in the field of preliminary products of organic chemistry. Dr. WITTE is responsible to me (KLAUER) for the proper planning in regard to output efficiency and technical processes, and has to see to it that the projects are suitably carried out in regard to location and factory planning. He is to advise and support you (AMEUS) currently in the establishment of the installations. Basic changes and extensions of the installations must be discussed previously between you and Dr. WITTE. A chief technician must be appointed who "is responsible for carrying-out the construction projects according to deadlines", and "who has to inform Dr. WITTE immediately in regard to difficulties in the negotiations with authorities, the procurement of workers etc. and keep him posted". "According to an order of the Field Marshal (GOERING)... further planning will be done in close agreement with the Wehrmacht under my (KLAUER's) direction". KLAUER is to be "immediately informed of all questions which may arise in the future in the field of production of preliminary products of organic chemistry." Such was the position of AMEUS in a state with a planned economy.

III. The knowledge of re-armament and the incorporation of production into the re-armament program do not establish, per se, any criminal facts in the meaning of Control Council Law No. 10.

Reviewing once more the evidence as a whole, as submitted by the prosecution in the case of AMEUS in regard to count I of the indictment, it can be established that the prosecution has merely succeeded in proving that AMEUS knew about re-armament and that he had connection with some products in this re-armament.

Closing Brief AMEROS

- 1.) Re-armament per se is not a crime in the meaning of
Control Council Law No. 10.

The IAT judgment, in the case of the defendant SCHEUCH, has expressly established that "re-armament per se is not a crime" (IAT opinion page 151). Further substantiation of this judgment justly says: "If it (re-armament) represented a crime against peace, it must be shown that SCHEUCH carried out this re-armament as a part of the vast plan for waging aggressive wars". In other words, the facts of the case against the defendant "depend on the supposition" whether he "actually knew about the aggressive plans" (IAT opinion l.c.) This positive knowledge of the aggressive plans, however, has not been proven in the case of the defendant AMEROS. On the contrary, it has been established beyond any doubt that AMEROS knew nothing of the aggressive plans and could not know of them either. AMEROS regarded the re-armament as a means to secure an independent Germany by peaceful methods and to secure for Germany equal rights in the world. The plants under his technical supervision in which such products were manufactured as are charged against him by the prosecution were established - at least allegedly - "for purposes of national defense" (Lsh. 216, SI 7427/7428).

The actual size of the production as demanded by the Reich gave no clue from which could be inferred that a crazy re-armament was being carried on which could "only be justified by the ultimate aim of war" (IAT judgment page 151). Thus it cannot be understood why just AMEROS should not have held the same opinion as the public in Germany, which was thoroughly convinced of the peaceful intentions of the Reich Government.

Closing Brief AMEROS

The defense as a whole has submitted extensive material "to prove the ignorance of the German people in regard to HITLER's plans to wage wars of aggression". (Document concerning Germany's foreign policy, part I and II). To infer from the historical fact of the outbreak of a war in 1939, and from the present-day knowledge of historical causalities that even certain circles which had no close connection with the Reich government knew of its aggressive intentions is - in the case of AMEROS at least - a false conclusion. (cf. the moral-theological opinion of the Jesuit Father FRIEDRICH SCHNEIDER document 161 Bzh. 231, vol. 7).

- 2.) The assignment of AMEROS to the re-armament program was made absolutely necessary for production reasons, without any possibility for AMEROS to evade this.

The defense has shown in detail and proved that the "collaboration" of AMEROS in re-armament matters was not based, in any case, on his own initiative, but that it resulted, in spite of his clear-cut intentions to keep aloof - which in one case were even interpreted as sabotage - from the fact that he was an expert and had worked in the field of certain products. In the Germany of the Four Year Plan men like AMEROS had no longer any right to decide for themselves. The National Socialist State had created the legal instruments too by means of which "free business was forced into the re-armament program...."

" The Law for Remedying the Distress of the People and the Reich of 24 March 1933 (Wi. R. vol. I no. 1 Def. Bzh. 193), the so-called Enabling Act, had already placed legislative power, even if it concerned laws changing the constitution, into the hands of the Reich government.

Closing Brief AMEROS

Since that time the National Socialist Government could also make decisions on economic measures of any kind without the sanction of the constitutional parliament.

Through the Law concerning Alterations of Criminal Law and Criminal Procedure of 24 April 1934 (Wir. vol. III, No. 62 Wir. Exh. 256, cf. also the interpretations of Schneider Doc. 148, vol. VI, p/ 83, Sch. Exh. 217) an article 92a was added to the German Penal Code: "Whoever, during a war or in case of imminent danger of war, does not keep a contract with an authority concerning the needs of the Reich or its allies military power, or carries it out in a manner apt to frustrate or endanger the purpose of the services rendered, will be sentenced to jail for not less than one year. The same applies, in times of common distress, to a contract with an authority concerning the supply or transport of food or other articles for the relief of common distress." (cf. also Schneider doc. 221, Sch. Exh. 216, vol. VI, page 80).

The Reich Minister of Economy was empowered through the Law concerning Economic Measures of 3 July 1934 (Doc. Wir vol. I, No. 6, Def. Exh. 198) "to take all measures within his sphere of authority which he thought necessary for the promotion of German economy as well as for the prevention and removal of damage to economy". (L.c. article 1); he can punish infringements of the regulations issued by him with a jail sentence, according to art. 2 L.c. together with a fine, or with one of these penalties alone. Similar penal regulations were provided by the Ordinance concerning the Traffic in boots of 4 September 1943 (Doc. Wir. No. 61, vol. III, Def. Exh. 255). In addition, a second ordinance concerning the details of execution was issued on 5 November 1936 (Doc. Wir. vol. No. 11 Def. Exh. 202

like Schneider Doc. 97, vol. III, page 2, Sch. Exh. 116, like AMEROS Doc. GA 305, vol. III 2, page 13, AMEROS Exh. 72) in connection with the so-called Four Year Plan, the tasks of which had been transferred to GOERING, then Prussian Minister President through an ordinance of 18 October 1936 (Doc. Wir. No. 10, vol. I, Def. Exh. 202-Schneider Doc. 96, vol. III, page 1, Sch. Exh. 115)

Closing Brief AMEROS

This ordinance threatened any person who did not comply with the orders and prohibitions issued by the Ministry of the Four Year Plan with the same jail sentences and fines. The same applies to the Ordinance concerning the Traffic in Goods of 18 August 1939 (Doc. WtR. vol. III, No. 68, Def. Exh. 252 like Schneider-Doc. 28, vol. III, page 6, Sch. Exh. 119), which expressly mentions in art. 12, par. 2 the contributions ordered by the Third Reich from private industry and makes them enforceable by criminal law.

After the outbreak of war, these penal regulations were increased up to the death penalty. This will be gone into later on in connection with Dr. AMEROS's war work.

The products, in so far as they are laid against Dr. AMEROS, were products of the Four Year Plan. They were manufactured almost exclusively in plants owned by the Reich.

Dr. AMEROS's special position - based on modern technology - as an authority in the field of organic chemistry cannot be regarded "as an important position in business and industrial life" in the meaning of Control Council Law No. 10, nor does it establish any form of participation according to Control Council Law No. 10. The contribution to re-armament rendered by the productions under Dr. AMEROS's technical supervision has, moreover, not been the cause for the outbreak of a war of aggression in 1939, either through size or nature.

Dr. AMEROS is not guilty in any respect of the planning and preparation of a war of aggression.

FRANCOLOR

As mentioned in another place of the Trial Brief, AMEROS became a deputy member of the I.G. Farben Vorstand only on 1 January 1938, and became a regular member from the summer of 1938 on. His work dealt with the scientific and technical questions of organic chemistry as handled within the framework of Sparte II under the direction of ter MEER. The main sector which AMEROS had to direct and to supervise as a technician was devoted to aliphatic chemistry, i.e. Buna and plastics, new solvents and resins, organic intermediate products for dyes and pharmaceuticals, detergents and textile aids, tanning agents and others. In this capacity, and before the war, AMEROS also established friendly relations with the French industry in connection with planning and license negotiations for new installations, in France.

1. AMEROS did not participate in the negotiations which lead to the establishment of Francolor.

When negotiations were started in 1930 with the French dye stuff industry, Otto AMEROS did not participate therein.

The negotiations started with the old problems of the dye stuff industry's cartel policy the Gallus agreement etc., subjects entirely unfamiliar to AMEROS. AMEROS was therefore not present at the preliminary negotiations with the representations of the French dyestuff industry at Wiesbaden on 31 and 22 November 1940 (Exh. 1246, vol. 57), nor was he consulted before or after this affair, which is proven by the fact that the name of AMEROS appears in none of the many documents on hand concerning the negotiations.

Closing Brief AMEROS

Exhibit	1241	NI	6839	vol.	57	English	page	31
"	1242	NI	792	"	57	"	"	49
"	389	NI	6161	"	57	"	"	26
"	1246	NI	6727	"	57	"	"	77
"	1247	NI	6838	"	57	"	"	100
"	1255	NI	6845	"	58	"	"	35
"	1250	NI	6949	"	58	"	"	1
"	1253	NI	6950	"	58	"	"	11
"	1256	NI	6886	"	58	"	"	59

The result of the negotiations at Wiesbaden was made known to the Vorstand members on 28 November 1940 (Exh. 3195 NI 15225). That was all.

- 2.) From 1942 on AMEROS was given the task to maintain the pre-war turn-over of Francolor through the delivery of processes, the supplying of raw material and factory equipment.

Otto AMEROS was only assigned after "the negotiations had been completed along the main line" (transcript German page 8082, English page 8007/8). "Herr ter MEER assigned me (AMEROS) at that time (summer 1941) to the administrative circle of Francolor as a member of the Verwaltungsrat with the special task to handle the technical questions of organic chemistry within Francolor. As every body knows, Francolor only turned out products of organic chemistry, i.e. dyes, the intermediate products for dyes, also all organic chemicals, detergents, tanning material, the resins and varnish. Thus it was a matter of expediency that I became a member of this body as the representative of organic chemistry". (Transcript 8082 English page 8007/8). The convention on which the Francolor agreement was based lists these field of work: (Exh. 1255 NI 6845 vol. 58, English page 35).

In preparation of this his technical task within Francolor, AMEROS went along to Paris on 21 July 1941, as stated by ter MEER during his examination on 17 February 1948. This was the first visit to France after the war.

Closing Brief AMEROS

AMEROS did not attend the final conference in the negotiations on 18 November 1941 which led to the signing of the statutes of the convention leading to the proper foundation of the Francolor, as he was a stranger to this circle; cf. list of participants Exh. 1255 NI 6845 vol. 58 English page 35. AMEROS was not introduced to the administrative circle until 18 December 1941 (Doc. Schnitzler No. 78 Exh. 82), and on 2 February 1942 AMEROS started on his proper work with the first conference of the Comité technique in Paris - which led directly to a common working - session at Ludwigshafen at the end of March 1942 (Q. Doc. 803 Exh. 174). "It was a difficult situation for the French industry after the termination of the campaign" (transcript German page 8083, English page 8008).

"I (AMEROS) was faced with the problem - how to make it possible that the French factories be kept going under all these difficulties, and how even to restore, if possible, the old output capacity these plants had before the war" (transcript German page 8085, English page 8010). "We produced dyestuffs at the Francolor. The demand, however, decreased because there were no fibres - only pigments for varnishes were in demand but on the whole the dyestuff business had receded as much as in Germany. Another line which compensated this long fall were the raw materials for varnishes. In addition there was a shortage of detergents ... and we put out a French detergent. - Everything the Francolor lost in the dyestuff field owing to the circumstances of war, was compensated for by processes supplied by us through our patents and our equipment" (Transcript German page 8090, English page 8014).

CLOSING FILE MEMOS

CERTIFICATE OF TRANSLATION

10 June 1938

I, Leon RATZKESDORFER, Civ. No. 120 483, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Leon RATZKESDORFER
Civ. No. 120 483

Closing Brief AM-ROG

"This was mainly due to the initiative of Dr. AM-ROG, who was particularly active in promoting the technical and manufacturing interests of the plants of the Francolor throughout the period he was member of the Verwaltungsrat of the Francolor". (QA document 801, exh. 173).

"By these auxiliary measures the Francolor obtained the allocations of coal, iron, and chemical raw materials, which they needed for the maintenance of their plants." (record German page 8086, English p. 8010).

The supply of naphthalene from the stores of the Ludwigshafen plant was one of the many cases in which supplies of chemical raw materials were delivered, as it would have meant a great hardship for the Francolor, in view of their unsatisfactory employment position, if on account of the non-delivery naphthalene of the production of Phthalic acid (in Villiers St. Paul) would have had to have been discontinued. (QA document 802, exh. 173).

The IG handed over to the Francolor a number of "manufacturing processes and technical records complete with all details and apparatus, such as

Phthal acid anhydride	from Ludwigshafen
Formaldehyde	"
Fatty alcohols	"
Bauxite	"
textiles no dants	"
Indanthrene blue	"
Alkyde resins	" and Uerdingen
direct deep black	from and Leverkusen

Transformation of anthracinone plant of Ludwigshafen.

As can be seen, the ~~most~~ ^{most} suggestions came from Ludwigshafen and thus from AM-ROG (see Meer doc. 72, exh. 247, vol. III, QA 801 Exh. 173 and QA 803, exh. 174).

Closing Brief AMEROS

In this connection the dismantling of one unit of the most modern Formaldehyde plant Ludwigshafen, and the transfer of this unit to Villiers St. Paul, a thing which was done at the instigation of AMEROS, (QA 801, exh. 172), is indeed a striking proof of the fact that Otto AMEROS gave honest support to the French.

The manufacture of the below-mentioned textile mordants and soap-making raw materials, which the Francolor plants had not manufactured in the past, proved particularly profitable for them:

Fatty alcohols
Fatty alcohols-~~acetates~~^{sulfonates} (Cyclamones)
ethanolamide-Condensation product (soap substitute
Mixopons)
Soremine SG
Bottin Spaltol SG
Special arivego G
Kamnite

The IG delivered preliminary products for the manufacture of a part of the above-mentioned products.

These products and processes, too, were developed within the restricted sphere of activities of Otto AMEROS in Ludwigshafen, and they are proof of his initiative in assisting the Francolor.

When German authorities intended to close down French plants, as for instance "the closing down of the Phenols factory of Francolor" AMEROS used his personal influence to prevent this, "especially as the raw material situation of this plant in regard to Sulphuric Acid is assured and it is also adequately staffed" (QA document 804, exh. 175).

The following case is characteristic of AMEROS' helpful attitude vis a vis the French firm:

"Before the IG came to France, the Delvégé - a firm of the Henschel Konzern - had dismantled in 1940 a Phthal acid unit in Villiers St. Paul. To replace this AMEROS offered them in 1942 his technically superior system of Ludwigshafen, as is shown by document QA 823, Exh. 219, vol. II C.

Closing Brief AIGROS

Thus the plants of the Francolor achieved the same turnover in 1942 as the corresponding plants of the parent enterprises in 1938, the last complete peace-time year. It is of special interest to note in this connection that though the quantity of the production was reduced to about 50%, the value of the turnover remained the same. This was the effect of the introduction of specific highly valuable products, such as textile mordants and other organic chemicals. (CA document 822 and record German page 8024, English page 8009).

3.) AIGROS also supports other French firms such as Rhone-Poulenc.

AIGROS adopted the same attitude towards the Rhone-Poulenc, the second largest firm of organic chemistry, "though no agreements had been concluded with the firm." (record German page 8089, English page 8013).

It is due to the initiative of AIGROS that the firm was asked to participate in the synthesis of modern soap substitutes (CA 805, exn. 176), and was made familiar with the most recent developments of German Nylon production. AIGROS supported this suggestion in his circular letter of 1st October 1943, document CA 806, exn. 177, and forwarded all necessary manufacturing instructions and many supplements even as late as the beginning of 1944. (Document CA 807, exn. 178, CA 808, exn. 179 and CA 809 exn. 180).

AIGROS did not participate in the Pharmaceutical agreement which was concluded between the IG and Rhone Poulenc. Neither did AIGROS participate in the Combine Sauerstoffwerke Lothringen.

Closing Brief AMEROS

In this connection the Prosecution also mentioned the steps which the IG took with regard to a subsidiary company of Kuhlmann, the Muehlhauser Chemische Werke GmbH. Though AMEROS had nothing to do with this case, it is again characteristic of his initiative in technical matters that the intermediate products' Commission (Zetko), of which he was Chairman, passed the following resolution:

"As the plant (Muehlhauser Werke) can only be placed on a better paying basis by way of an increased production, the Zetko recommends the suggestion that for the time being 50 tons of Aniline per month should be manufactured at the Muehlhauser Chemische Werke, in spite of the fact that the Aniline would cost twice as much. The Ludwigshafen plant again handed over, as in the case of the Francolor, valuable apparatus (a thermometer casing plated with 1200 gr. of platinum) for the assistance of the plant; Dr. SCHMALL and Dr. AMEROS co-operated in carrying out this plan. (Affidavit Dr. SCHMALL for Meer Dec. 74, vol. 3 page 74).

- 4.) Attitude adopted with regard to the documents relating to AMEROS' cross-examination: For reasons of "window-crossing" the production program of Francolor had to include some unimportant manufactures of Centralites and/or liminary products for high explosives. This was not done for technical reasons of armament, but in order to maintain the production of the Francolor.

The prosecution documents:

NI 14119	Wsh.	1907	NI 14089	Wsh.	1908
NI 14118	"	1909	NI 14245	"	1910
NI 14091	"	1911	NI 14272	"	1912
NI 14090	"	1913	NI 14240	"	1914
NI 14092	"	1915	NI 15233	"	2197
NI 15259	"	2198			

show the following picture with regard to the alleged war production of the Francolor plants:

When the Comité Technique of the Francolor realized that the existence of the company was threatened and that commissions, such as a production transfer of 8 000 tons of dyo stuffs, were not approved by the Military Commander, Paris, a production program had to be drawn up which would assure to the Francolor a volume of production approved by the Military Commander; because without this approval the coal and power supply would have been cut off, the Francolor plants closed down, the apparatus dismantled, and the workers deported.

For reasons of "window dressing" a program was submitted to the military agencies (MEF-military commander), as also to the technically uniformed Administrative Staff of the Economic Department Paris, which mentioned direct and indirect Wehrmacht requirements as well as productions catering for the requirements of the civilian sector.

5. The so-called Wehrmacht requirements had to legalize the production for the civilian sector which was far larger as far as quantities were concerned, and had to be made use of for reserving the power and raw material supplies:

As Dr. LOEHR, a member of the technical commission has confirmed (for Moor document 160, annex 279 submitted as supplement), the Francolor plants remained primarily dyo-stuff plants even during the war. During the years 1941/42/43 the dyo-stuff production amounted to

4.700 to
4.500 to
3.900 to respectively.

The corresponding figures relating to the textile mordants, which come within the dyo-stuff sector, are:

300 to
400 to
2.000 to

the figures relating to the organic intermediate products, which are mainly used for the manufacture of dyo-stuffs and textile mordants are:

17.000 to
18.000 to
22.000 to

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95% of the production of the finished dyo-stuffs remained in Franco, as far as the export countries of the Francolor were concerned.

(Transcript German page 13365, English page 13036).

The production of synthetic tanning agents increased

from 200 ts in 1941

to roughly 1000 ts in 1943,

that of chemicals for the manufacture of rubber products

from 300 ts to 4,200 ts.

In the mentioned sector alone it was possible almost to double the former peace-time production of the Francolor factory.

(Transcript German page 13366, English page 13037/38).

"In view of the existing control regulations it was simply impossible in the long run to manufacture nothing but dyo-stuffs, textile mordants, and other purely peace-time products in the plants of the Francolor". (Transcript German page 13366, English page 13037/38).

It was therefore necessary to draw up in 1942 a program catering for the so-called direct and indirect Wehrmacht requirements. Actually the products in question were in no case gun-powder or high explosives or gas" (Transcript German page 13366, English page 13037/38).

Stabilizers for gun-powder were manufactured, such as contralito, diphenylamine, furthermore Mononitronaphtalino, which was also a completely harmless preliminary product". (Transcript German page 13366, English page 13037/38). as far as the indirect Wehrmacht requirements were concerned, the products manufactured were of a purely peace-time nature. (Transcript German page 13367, English page 13038).

In accordance with the affidavit of Dr. LOHR, who made a report for the American authorities in 1945, 13% of the total production was transferred to Germany in 1942, and 18% in 1943.

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The deliveries for the so-called direct Wehrmacht requirements, which went to Germany amounted in 1942 to less than 5% of the total production of the Francolor. Among these there was not one single kg of gun-powder, high explosives or poison gas. (Transcript German page 13367/68, English page 13038/39).

With regard to the comments which some merchants gave on this problem in exhibit 2197, NI 15233, enumerating Dinitrochlorbonsol and Alkydalo among the Wehrmacht production, the reply given by Herr Meer on page 13453 of the German and page 13165 of the English transcript is correct. He said: "Dinitrochlorbonsol was not delivered, as far as I know, and Alkydalo is a coating varnish and not a Wehrmacht product."

Thus the real position was such that one always put a few products of importance for war-economy at the top of the list, but that the main production was quite apart, from them, a fact which has been clearly proved by the afore-mentioned figures". At the conference of the Comité Technique on 5 October 1942 in Paris, which took place under the chairmanship of Herr G. FROSSARD and which was attended, apart from the representatives of the Technical Commission, Dank, Roell, and Locher, by Herr Herr Meer and Herr AMEROS, (NI 15259, exh. 2198). Dr. Roell discussed "the transfer of production" from the IG to the Francolor. In view of the increasing uncertainty of coal deliveries the Francolor had to adapt itself to the existing situation, i.e. to the requirements of the Wehrmacht, in order to obtain "at least 2000 ts of coal".

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This program included: Mononitronaphtalino, diphenylamine, Contralito, dinitrochloro benzole for the Wehrmacht; and Phenyle botanapht^{amine} ~~ylino~~, accelerators G and D, Kaurit glue, Monochloro acetic acid, Glycerine Phthal acid, and synthetic materials manufactured from Phenole and Formaldehyde, as well as Phenole for the civilian demand.

Then the document goes on to give proofs of the efforts made by the IG^{IG} behalf of the Francolor, for instance, by dismantling one unit of the Formaldehyde plant Ludwigshafen, or by giving technical assistance in connection with the production of Methanole and many other products in Franco. Otto AMEROS achieved by his endeavors that the Francolor was commissioned to produce textile mordants, a fact which brought the firm a considerable increase of production, and even he procured for the plants such products as Butyl Phenole, which were in very short supply and therefore controlled. All this is proved by the evidence submitted by the Prosecution exh. 2198 NI 15395.

The exh. 1907 NI 14119 contains some correspondence between two official agencies of the Reich Ministry of Economics, regarding a conference in Paris on 5 February 1942 which was held at an Economic Department of the Military Commander. The contents are explained in the following documents.

The exh. 1909 NI 14118 contains a letter addressed by the Wehrmacht agent, Col. LETIS, to the Economic Armament office of the OKH, dated 13 March 1942; in this letter he says that "the IG Farben-industrie is following a suggestion made by the chief of the Army Ordnance Office, who proposed..... that those productions which, in contrast to the large raw material industries, such as Nitrogeno, ~~gasoline~~ ^{gasoline}, Buna etc., required more work by hand, should be transferred to Franco (to the Francolor)".

There follows a very extensive program subdivided into commissions of the

Army Ordnance Office,
the IG Farbenindustrie,
and the French commissions.

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The initials of AMEROS show the reductions made by him by way of a question mark or a minus on the margin, in par. 1 where Dichisolo Pentaerythrite and Dinitrit⁴²cholo (for St. Clair d'Rhône) are mentioned; this means that only Centralite and Mononitronaphtaline remained. Apart from this, the letter was written for the purpose of obtaining coal allocations.

The document MI 14089 exh. 1908, a letter addressed by AMEROS to the OKW Oberst RECHT, and dated 16 April 1944, states that one reason for the transfer of production from the IG to Francolor can be found in the solution of the foreign workers' problem, a statement which is again referred to in the next paragraph (under No. 6). The attached "summer-program 1942" is drawn up on the above-mentioned lines. The exh. 1910 MI 14245 confirms that the coal allocation for the working program of the Francolor plants has now been fixed "and contains the promise that the program drawn up in accordance with the IG's suggestion will^{be} started immediately".

A particularly impressive proof for the "window-dressing" is contained in exh. 1911 MI 14091, of 18 December 1942. "In view of the fact that the sales certificates of the Francolor for the month of October 1942 showed an increase of the dye-stuff production, whereas the production for the direct and indirect Wehrmacht requirements mentioned under "produits divers" had decreased, AMEROS considered it right to re-examine the total production, in order to be able at any time to account to the Military authorities for the use made of the coal allocation". "The two main plants, Villiers St. Paul and Oiselle, did not even deliver the relatively small quotas of their program for direct Wehrmacht requirements".

The final sentence shows how serious was the situation for the Francolor plants. "Summing up, it can be said that the Francolor plants will only be able to maintain their production in the near future by catering for the armament program.

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The coal allocation will most probably be reduced during the next 2 - 3 months, so that only negligible quantities of coal will be available for the civilian sector. One must count on production hours being reduced."

At that time the threatened doom almost overtook the Francolor plants, which would have meant that they would have been closed down on account of lack of coal and the staff deported.

"ROSSARD asked AMEROS for help, so that the works should not be closed down because the Military Commander was not interested in the production; and by means of "window-dressing" vis-a-vis the Military Agencies one achieved finally that the plants maintained their production up to the last day of the war". (Transcript German page 8156/7, English page 8092). The document exh. 1913 HI 14090 shows up such a success of AMEROS in connection with his efforts to obtain coal. "The total amount allocated, however, is in accordance with your request" and we are thus assuming that your (AMEROS') reduced program can now be carried through". The initialed remarks of AMEROS in document 1914 are evidence of AMEROS' activities.

"Villars must become an armament plant". This declaration was necessary if one wanted to avoid the danger of the majority of the staff being withdrawn. The various remarks show the internal dispositions "of 2 200 ts of coal 800 will be used for military purposes (direct and indirect Wehrmacht requirements), 1400 for the civilian production". Pentacerythrite should be marked with an "L" (varnish mark) not with an ^M"X" (military mark) "no more Hexm (Hexamethyl antotramine) to be manufactured" - that means that another product of the Wehrmacht sector was crossed off -and then follows an exclusive dyo-stuff program.

¹⁹¹⁵
The document exh. HI 14092 of 8 January 1943 shows how difficult was the part AMEROS had to play, as he had to bear the responsibility vis-a-vis the Military Commander for assuring that the coal was used in accordance with the official instructions.

- 6.) The Francolor and other affiliated French companies had to send workers to Germany in accordance with the so-called Relove program. These firms asked the IG to receive these voluntary workers and chemists into their plants.

Later difficulties which arose in connection with the workers desire to return home were due to measures of the Labor Ministry. Concerning the treatment of the Frenchmen at the Ludwigshafen plants some testimonies of French officers have been submitted. As no comments need be made about the aryanization of the plants, in view of the fact that no Jews at all were employed in the Francolor factories, the only charge raised in the indictment which now remains to be examined is the point dealing with the deportation of French skilled workers to Germany.

Actually AMEROS had no responsibility in question of procurement and treatment of workers, as he had not been a plant leader (Betriebsfuhrer) since 1st May 1939, and also had no time to busy himself with workers' problems.

If, in spite of this, he was asked by the French firms to take care of this problem of accommodating the French workers from the firms Francolor and Rhone-Poulenc, this fact can be explained by the friendly relationship existing between AMEROS and the heads of the French firms. This charge can therefore be refuted by a brief exposition.

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The starting point is a letter dated 6 July 1942, in which Dr. KRÄMER of Paris informs ter Meer and AMEROS that "in accordance with the statement made by the President of the Cabinet Council Laval, a total of 150 000 workers were to be released by 4 July for transportation to Germany"; he goes on to say that the Francolor's quota was 100 workers." "Herr PROSSARD will tell me in a few days how many workers of the St. Denis, Villers St. Paul, and Oisella plants have volunteered to go." Herr PROSSARD suggests that Francolor workers should be employed as far as possible in closed groups at the Ludwigshafen plant".

These voluntary workers arrived during the year 1942. The IG Ludwigshafen plant concluded an agreement with the Francolor, according to which the wage rates, the separation money, the working hours, the official leave regulations, and an equal social position with the German workers under the law (Par. 10) were fixed; amongst other things the duration of contracts was fixed at 12 months. (QA document 810, exh. 181).

The difficulties only arose at the end of 1943 and the beginning of 1944, especially on account of "the intensified regulations of the Reich Labor Ministry, which forced the local Labor Offices to issue a compulsory service order (Dienstverpflichtung) when the contract terminated. Only if the French firms made replacements, available, were the French workers whose contract had terminated permitted to return to France (testimony Kinszenmay Qa 814 and 815, exh. 185 and 186).

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AMEROS' attitude and principles in connection with this question of the French foreign workers is shown most clearly by 3 affidavits of French officers, who worked during the war as chemists at Ludwigshafen. These affidavits speak for themselves. (Qa document 818, 819, 820 and 821, Qa Exhibit 189/92).

P. JARNET sums up AMEROS' endeavors as follows: All the French engineers employed in the IG factory at Ludwigshafen who were able to return to their families before the end of the war owe this fact largely to Dr. AMEROS. (Qa document 819, exh. 190).

In this connection the attitude which AMEROS adopted in principle in connection with the employment of French worker in Germany should be of great importance; this attitude was expressed by AMEROS vis-a-vis the GKN in exh. 1908 and 1909. "At home the French workers lives with his family, and he has many possibilities, especially in Franco, of obtaining food stuffs from relatives who are farmers". (Exhibit 1909 NI 14118).

The German specialised workers should be employed in such places where the manufacturing process is mechanized to the highest degree, that is to say, in the large raw material industries, such as the nitrogene, synthetic gasoline, and synthetic lubricant productions, as well as in the Buna production, whereas those productions which, in contrast to the afore-mentioned plants, require more work by hand, should be transferred to Franco." These ideas would have changed the whole foreign workers' problem, if they had been carried out in all cases (NI 14118 Exh. 1909).

G. Closing Brief AMEROS

Synthese Kautschuk Ost G.m.b.H.

I. The evidence produced by the Prosecution is irrelevant.

Already at the time when the documents concerning the so-called "Russian Phase" were produced, the defense denied that this evidence was relevant; this was done in a motion concerning "Synthese Kautschuk Ost G.m.b.H." dated 24 October 1947.

The purport of the objections raised by the defense was that none of the projects mentioned in the documents in question (exh. 1178 to exh. 1189, contained on the documents books 63 and 64) ever went beyond the stage of preparation.

In this connection, it is sufficient to refer to the arguments then submitted both as to the facts and to the legal questions involved. (See transcript page 2674 and 2728/29 German, 2674 and 2727/28 English, and also the written version of the objection as contained in the brief dated 27 October 1947, addressed by the Defense to the American Military Tribunal VI, case No. 6, on behalf of Otto AMEROS). From their part, the Prosecution have not denied that the acts in question were only acts of preparation:

"It is perfectly true that the evidence produced by us does not constitute an accomplished fact of spoliation and looting committed in the Soviet Union....."

As a matter of fact....., we do not charge, and we have no evidence to this effect either, that I.G. actually acquired control of the entire Russian chemical industry or of parts of it". (transcript page 2730 German, 2729 English).

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The Tribunal accepted the documents quoted at that time for the express reason that the Prosecution had not yet introduced that part of their exhibits which had the special purport to prove the charge of a conspiracy for the commission of crimes against the peace. "In these circumstances" it was not possible for the Tribunal to rule "at this moment" that the exhibits objected to could not have any probative value with regard to the proof of this charge, "if considered together with other evidence referring to this matter". (transcript page 3502 German, 3484 English).

At least as far as the defendant AMEROS is concerned, the Prosecution has not produced any "additional material" concerning Count Five. The facts have remained as they were. They can be summarized as follows: -

- 1.) Before the outbreak of war, AMEROS had no knowledge of any economic projects concerning the Soviet Union.

All measures whatsoever which may have been taken by any Reich agency concerning the exploitation of the newly occupied Russian territory were completely unknown to AMEROS before the outbreak of war. On the contrary, this war against Russia came to him as a complete surprise. As late as in June 1941, the protracted negotiations conducted by AMEROS with a Russian commission in 1940/41 concerning the granting of a license for the German buna process were still pending. (SI 6506, exh. 344). It was even a few days before the outbreak of war with the Soviet Union that a special Russian commission was staying at the styrene oxide plant Bolton.

- 2.) It was by way of a government order that AMEROS was, in his capacity of a buna expert, involved in the projected measures concerning rubber plants in the Soviet Union.

Initially, this only amounted to the furnishing of the names of experts who were required for the

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Russian buna plants. This is the purport of the letter addressed to Professor BRAUER on 28 June 1941, in other words after the outbreak of war. (NI 4446, exh. 1178, book 63, page 49). The co-operation of AMEROS did not result from his own initiative; in fact a few days after the outbreak of war, the Reich Ministry of Economy approached AMEROS - in his capacity of the responsible engineer of Buna Chemie (buna chemistry) in Germany - with the order to furnish the names of suitable experts.

a) The term "Uebernahme" (taking over) referred to actual operational taking over, i.e. the start of operations in the plants. In the 26th meeting of the Vorstand dated 10 July 1941, the reason given for the designation of suitable collaborations for the technical and administrative functions was "the continuation of operations of the chemical industry of the previous Soviet Union"; at the same time, it was stated that as far as rubber was concerned, I.G. would - as a result of two conferences at the Reich Ministry of Economics - be appointed as a "trustee" (NI 8077, exh. 1177, book 63, page 47). There was no indication whatsoever to the effect that I.G. was supposed to acquire the ownership of the Russian plants.

b) It was not the intention to produce material for war purposes.

- 3.) By the notion of taking over the Russian rubber plants, it was only meant to start or resume operations in order to secure production for the covering of the general demands.

In the urgent letter (Schnellbrief) of the Reich Ministry of Economy, the following terms were used: "maintaining of operations in a certain number of chemical plants in the occupied Russian territories which are most vital for the Russian area and for the Greater German national economy" (GA 139, doc. book 1B, page 1); furthermore, it said: "Dr. BOELL (Reich Office for Economic Development, buna section) emphasizes above all the importance of exploiting the Russian

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installations for the purpose of "additional production". It means a misrepresentation of the real intentions of the Prosecution considers the expectation of AMEROS that these preparations would soon enable the Russian buna industry "to serve us" "outspoken cynism", "because buna is required for the waging of war, whereas this was a matter of occupation" (transcript page 2574). As expressly shown by the letter dated 28 June, the intended production was meant to be geared up by the conversion of the existing buna process - which was inferior in the opinion of I.G. - into the more efficient I.G. process.

- 4.) For AMEROS, the co-operation in the entire project was, therefore, a merely technical problem.

Accordingly, the tasks of the "members of the buna commission" were in a circular letter addressed to them (NI 4966, exh. 1179, book 63, page ⁶³~~49~~) mainly outlined as follows: "to settle the problem of the use of the Russian installations for the production of certain types of buna or of preliminary products used in this production and to examine the technical aspects of this possibility".

In consequence, AMEROS did not take any interest at all in the question of the acquisition of the Russian plants; he only tackled the technical aspect of "the problem" "of preparing immediately for the resumption of operations in the plants." (NI 6737, exh. 1180, circular letter No. 2, book 63, page ⁶⁵~~66~~). It was under a merely technical aspect, too, that AMEROS took part later on in negotiations concerning a contract connected with the projected Synthesen Kautschuk Ost G.m.b.H.. In the "discussions concerning the formation of the Kautschuk Ost G.m.b.H..... he did not make any decisions. It was for MEHR who dealt with the contractual problems, whereas I (AMEROS) was responsible for all technical questions involved." (QA 138, book IB, page 2).

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It is quite in line with this position that the question of the right of preemption", too, was of major importance for AMEROS. This resulted from the fact that it was intended to improve the Russian process and that in case this was successful, I.G. intended to secure the pertinent rights within the German Reich, too. In the opinion of AMEROS, the plants which I.G. found in Russia were no interesting objects, "but those plants which I.G. could have improved might perhaps become interesting". (GA 138, vol. 13, page 20).

AMEROS had nothing to do with other projects within the Russian area and in connection with the war against Russia.

If it is tried at all to connect his actions concerning Russia with his other activities, then his positive attitude in the Francolor case enables us to draw a conclusion as to the conception which AMEROS would have formed of the running of Russian factories by way of a trusteeship - if this matter had not remained in the stage of preparations which were never carried out.

CERTIFICATE OF TRANSLATION

14 June 1938

I, Julia KERR, Civ.No. ETO 20 185, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Julia KERR
Civ.No. ETO 20 185

H

The Problem of procurement and utilization of labor forces in Germany during the war.

I. The social and human feelings of AMEROS in the eyes of his fellow human beings.

His closest collaborators see in Otto AMEROS "an inspiring ideal" OI-108/Exh. 41 volume 1 A page 25.

His former superiors point out his "sympathetic qualities of his character and their "conviction of his strict morality and his unimpeachable humanitarian conduct". OI-Doc. 103/Exh. 21, volume IA, page 12.

Matured persons of high standing with great experiences in life appreciate in AMEROS his "outstanding humanitarian qualities", which gained "the confidence, affection and respect" of those persons with whom he came in touch through his work. (OI-Doc. 104, Exh. 22, volume II, page 14). They saw in AMEROS "one of the most decent and promising young men of the younger German generation" (OI-Doc. 110 Exh. 42, volume II, page 30).

His subordinates emphasized AMEROS' frequently "dangerous interference" on their behalf against all National Socialist tendencies which was dictated only by considerations of humanity and professional qualification. (OI 118, Exh. 46, volume II, page 49) (OI 117, Exh. 45, volume II, page 46) Foreigners too emphasized his "perfectly fair and generous manner not only his vast scientific knowledge, but also his extreme friendliness, - I could say humaneness", he is to them "a complete man, highly cultured, with warm feelings towards humanity". (OI-Doc. 111/Exh. 43/B, II, page 32, OI 112/Exh. 44, volume II, page 35).

CLOSING BRIEF /MBROS

MBROS, a student of the Jewish Professor VILISMAEDTER whom he held in high esteem (O/L 105 and O/L 107/Exh. 19 and 20, volume I.) had nothing in common with the Marxist idea of racial superiority. As a consequence he also interfered on behalf of co-workers who in accordance with the racial laws of the Third Reich should have been dismissed from their positions. These men are especially trustworthy witnesses for the fact that Otto MBROS had "never any antisemitic tendencies" (O/L 127/Exh. 48/ volume I. and O/L 519/Exh. 203/ volume V B, page 2).

To the same tendency belongs his non-nationalistic attitude which made him counteract Nazi terrorism wherever, in accordance with the prevailing situation, he was able to do so. (O/L 130/Exh. 35/ O/L 131/Exh. 36/O/L 132/Exh. 37/133/Exh. 38 and 134/Exh. 39, volume I.).

He had been educated to a non-national-socialist attitude already at his home. "His father was a school friend of the Archbishop of Freiburg, his Excellency, Dr. Konrad GROEBER. His Excellency well remembers the father of Otto MBROS as a faithful son of the church" (O/L-Doc. 114/Exh. 27/volume I./ page 40.)

Also at the home of his father in law, who had drawn upon him "the wrath of the National Socialist Party, there prevailed no friendly attitude towards National Socialism". (O/L 113/Exh. 26, volume Ia, page 39).

MBROS himself is known as "a man of religious conviction".

These "religious convictions of Otto MBROS alone were sufficient to prevent him from becoming an ardent National Socialist" (O/L 114/Exh. 27/ volume I./ page 40). This is also confirmed by the highest clergyman of his residence who had conducted his marriage ceremonies and who had baptized his two children. From his personal knowledge he considers MBROS "to be absolutely incapable of doing harm to his fellow men." (O/L Doc. 114/ Exh. 27 l.c.)

CLOSING BRIEF AMBROS

Far beyond his plants it was known ".... that all the actions of Dr. AMBROS were carried out in accordance with humanitarian and moral principles" (OA Doc. 116/Exh. 32, volume II, page 45).

II. AMBROS was not responsible for the procurement of and social care for the labor forces.

1.) The procurement of labor forces and their utilization was a matter ordered by the State and governed by regulations issued by the State.

The assertion, that especially on the so-called labor market the German enterprises were subjected to a strict system during the war, in which they had no right to participate, no authority to effect positive changes and not even a possibility to voice opposition is being proved by the development of legislation in this field during the regime of the Third Reich.

It should only be mentioned that this situation, which an outside observer, who is accustomed to a free economic constitution, will not be able to understand, developed in Germany at the latest already as from 1933. The development becomes apparent with the law for the regulation of the employment of labor of 15 May 1934 (regulation of economy, document 21 of 15 May 1934, volume I, page 40). In certain cases it made the employment of workers and employees dependent from the consent of the labor allocation authorities; violation of this law was punished by fines or prison sentences.

CLOSING BRIEF ALBROS

This development started already with the law for the regulation of the employment of labor of 15 May 1934 (WiR-Doc. No. 21/volume I, page 40) which in certain cases made the employment of workers and employees dependant from the consent of the labor allocation authorities; violation of this law was punished by fines or prison sentences. Soon afterwards, in article 1 of the decree concerning the distribution of labor forces of 10 August 1934 (WiP. Doc. No. 22, volume I, page 42) the president of the Reich Office for employment service and unemployment insurance alone was authorized to regulate the distribution of labor forces and in particular their exchange.

These basic transfers of the powers for the distribution of labor forces to the National Socialist authorities were in the time to come more and more strictly supplemented by individual decrees. Thus, the second decree for the carrying out of the Four Year Plan concerning the securing of the requirement in metal workers (Wi. R.Doc. 24, volume I, page 44) made an increased employment of metal workers in a private or public enterprise of the iron and metal economy dependant from the consent of the competent labor office. #

In addition ^{the} 6th decree for the carrying out of the Four Year Plan of ^{//(Doc. Wi. R. 24/volume I, page 46)} the same day/limited the free employment of auxiliary workers in the metal and construction branches. The same direction was taken by the regulations concerning the compulsory service, prohibition to change the place of work and especially by the decree which served as basis for tasks of special political importance to the State, of 22 June 1938,

(H. R. Doc. 27/volume I, page 49) and the laws attached to it.

Doc. H. R. 28 and 29 volume I, page 53.

According to the first implementation to the decree for the securing of the forces required for tasks of special political importance to the State, the so-called service obligation implementation of 2 March 1939 (H. R. Doc. 30/volume I, page 56) cf. SCHNEIDER Doc. 242, volume III, page 10), labor forces have to be demanded from the labor offices or the regional labor offices "if the labor forces required cannot be released by measures taken by the plant itself". The plant manager has to report his requirements in labor forces on a special form to these offices. The labor allocation authority allocates to him the labor forces by way of the service obligation. The compulsory service can only be discontinued if the labor office releases the person concerned from his obligations.

The regulations issued in the time to come have been introduced under the catchword "Labor Allocation Laws of the Third Reich" as document regulation of economy 31 to 35 in volume I of the defense volumes on the Regulation of Economy in the Third Reich and as SCHNEIDER documents 162, 251, 252, under the catchword "Labor Utilization" in volume 3 of the SCHNEIDER documents, and as SCHNEIDER documents 32, 35, 36 and 261 under the catchwords "Work Discipline" and "Production Pressure" in volume 6 of the SCHNEIDER documents. They refer mainly to the time of war. The registration and utilization by the National Socialist Authorities of all persons who were somehow able to be assigned to work became more and more severe. Any possibility to get labor forces except through the labor allocation authorities of the State were barred from the private entrepreneur. There was no free labor market, neither for the employees nor for the employers.

CLOSING BRIEF AMBROS

This representation of the labor market conditions in Germany as it applies in general to all those enterprises which, during the war, had to manufacture products important for the waging of war - and the enterprises which in count III are being used as evidence by the prosecution in the case AMBROS were such enterprises - will be explained in detail in one concrete case.

In PS 1436/Exh. 445, volume 21, page 3, that is the so-called Karin-Hall Plan Goering, already on 16 July 1938, orders as special task within the Four Year Plan the "supplying of the additional demand in labor forces required today, by checking the workers in the individual plants." (Exh. 445, figure III, 6).

Thus already in 1938 the organization of the Four Year Plan intended to interfere directly with the labor situation of the enterprises, if necessary by closing them down and by changes (for instance "if an enterprise produces at the same time machine-gun parts and chandeliers, the production of chandeliers has to be stopped before additional workers will be demanded" (Exh. 445, l.c., figure II b.).

The plant Gendorf and the plants Dyhernfurth, Falkenhagen, Auschwitz and Schkopau were such enterprises, which as armament enterprises or on account of their production (Buna) were subordinated to the Four Year Plan offices.

On 26 August 1938 the Gabechem, in a letter to I.G. Ludwigshafen which concerned a certain special case stated logically that he was competent for the procurement of labor forces ("the procurement....of labor forces is my task"). (NI-7428, Exh. 217, volume 8, page 1 of original, para. 5).

Even difficulties in the procurement of labor forces" "were to be reported immediately to "the special agent of the Gabechem and he was to be kept informed" (Exh. 217, l.c. last para).

CLOSING BRIEF AMBROS

The regulation carried out by the State did not only cover the directing of the employment, registration and allocation of the labor forces, but, during the war, interfered in many ways with the concrete labor conditions of the employees in their practical form.

The following are examples of this fact:

Rationing of the materials required for the carrying out of the social program of the plant.

Rationing of the food down to detail official food rations for the individual categories of labor forces.

Schedule of work.

Designation of place of work.

Standardization of accommodations.

Ration card and point system, coupons for clothing.

Certain categories of labor forces were no longer subordinated at all to the employers if he was a private entrepreneur but were subordinated down to the most personal matters (liberty, leisure time) to certain superior organizations (prisoners of war, prisoners).

- 2.) The actual social care for the labor forces was the task of the competent local plant manager. Already as from 1933 AMBROS did never have the post of plant manager in any of the I.G. works.

The law for the regulation of the national work of 20 January 1934 put the burden of the legal part of the organization of work (SMIRTE 1937 page 613) into the plant. (Doc. SCHNEIDER 239, volume 9, page 2).

CLOSING BRIEF AMBROS

According to article 3, para. 2 of the law quoted the entrepreneur, resp. legal persons (the I.G. was a corporation) had to appoint a deputy who had to be a person having a responsible part in the plant management if he does not manage the plant himself "

(doc. SCHNEIDER 239, l.c. page 4). This is always supposed to be the case, according to authoritative German interpretation of this law, which also becomes evident from the meaning of this law, if the entrepreneur does not work in the plant.

Only the representative of the entrepreneur who is a member of the plant community, that is to say who "directly lives and participates in the community of all persons working there" (doc. SCHNEIDER 239, l.c. page 3) can hold the post of plant manager in accordance with this law which is in force in Germany. Thus, if the enterprise includes several plants, as was the case at the I.G., the management of the enterprise and the management of the plant are separated. But only the community of the plant is directly governed by the social constitution.

Nor is it possible in this case that the plant manager can make decisions only within the frame of directives issued by the entrepreneur. In case he is bound to the directives of the entrepreneur, this binding has importance only for the inner relationship ^{between} entrepreneur and plant manager, as far as outside activities are concerned, however, it is ineffective. (This conception corresponds to the authoritative interpretation by commentators as Hueck-Nipperdey, note 11, article 3, Kinkel, Hoeder, Fochner, Mansfeld, Steinmann and others. The plant manager has in particular also a "legal power of attorney" to the effect that he is authorized to conclude individual labor contracts, for the entrepreneur to fix the conditions for the contract by agreement even if they do not correspond to the plant regulations, and to cancel them.

CLOSING BRIEF AMBROS

This power of attorney is based on law, thus it does not require a special authorization. According to German legislation, the plant manager, even if he is bound to the directive of the entrepreneur, is still responsible for his decisions for which he had to account to the Courts of Honor and the Reich Trustees (Hueck l.c. figure 1 d, 2 sec. to par. 3).

This sketch of the German legal situation should only provide an explanation of the plant manager functions as separated from the management of the enterprise.

This corresponds also to the practice as carried out in Germany.

The deputy plant leader and chief of production of the chemical works Buna at Schkopau, who is entrusted with these functions at present states the following in this connection: "In accordance with the laws of the Third Reich the Betriebsführer (for Schkopau Dr. WULF from the middle of 1939 on) became responsible for the whole of the Schkopau plant" (OA 116, Exh. 32, page 44/ volume 1A). The activity of Dr. AMBROS as member of the Vorstand and ^{deputy} business manager of the Buna G.m.b.H. and which "had a pronounced tendency to points of view of chemistry and technology", "precluded him by its very nature from direct interference with internal plant affairs, the Betriebsführer (Plant manager) alone being responsible for the latter". (OA-Doc. 116, l.c. page 45).

c) To counter-balance the entrepreneur was entrusted with the selection of the plant manager who was equipped with such far-reaching authorities. In as far as AMBROS participated in this task in an advisory capacity he chose the person for this position with all necessary care. (OA 117/118).

CLOSING BRIEF AMBROS

Thus the social care for the labor forces was an organizational task of the local plant managers. AMBROS himself, with the exception of a temporary activity as plant manager from 1937 to the middle of 1939 in the first Buna work Schkopau erected by him (O/L-Doc. 116 l.c. page 43) was never plant manager in accordance with the above-mentioned Law for the Regulation of the National Work. On account of the nature of his other tasks he was unable to carry out the functions of plant manager and this was actually the reason that he resigned in 1939 from the plant management of the work Schkopau.

WULF was plant manager in Schkopau from middle of 1939 on and AMBROS deputy business manager of the Buna Werke G.m.b.H. (O/L-Doc. 116, l.c. page 45)

Dr. TURSTER was plant manager in Ludwigshafen from 1938 on (TURSTER-Doc. 304/ Exh. 30, volume 1, page 3). AMBROS was chief of the organic department that is to say technical manager.

Dr. WITTMER was plant manager in Gandorf from 1939 on (O/L-Doc. 118, page 48). AMBROS was business manager of the plant managing company Anorgane G.m.b.H. Dr. PAHM was plant manager in Dyhernfurth (O/L-Doc. 119, Exh. 47, volume II) and that as from the day the construction and production was started. AMBROS was business manager of the plant managing company Anorgane G.m.b.H.

Dr. GORR was at first plant manager in Falkenhagen and after him Obering. PILFINGER. (MI-7618/Exh. 648, volume 36, page 2 of original. AMBROS was to become business manager of the plant managing company Monturon.

CLOSING BRIEF AMEROS

In Anschwitz it was HURR/FAIST (transcript 14320), DIERPFELD as construction manager, engineers as long as the work was still under construction, and as from Spring 1944, with the start of the first production it was DIERPFELD (transcript 11577)

AMEROS was the representative of the Vorstand for the Buna and Montan part.

Luranil was no plant at all, but only a construction firm which was directed locally, in 1938 at Dyhernfurt by Schmal as procurist and Hilfinger as construction manager (OI-Doc. 726 Exh. 216, volume C, para 24 and OI Doc. 727 Exh. 217, para 26, volume C).

AMEROS was one of the business managers of the Luranil Bau-Gesellschaft G.m.b.H. which had been founded at Ludwigshafen (NI 4986, Exh. 355, volume 13, English page 59) OI-Doc. 506, Exh. 123, volume VI, page 28). The remaining plants should not be included here but are mentioned for completeness' sake.

In Huels it was Dr. HOFFMANN, AMEROS was one of the several Aufsichtsrat members of the Chemischen Werke Huels G.m.b.H.

In Molten it was Dr. FRIEDRICH, AMEROS was here too besides some other persons a member of the Aufsichtsrat of the G.m.b.H.

In Zweckel it was Dr. HASTIGHEIMER (OI 117, volume I, page 46) and as Steden it was SCHAEFER.

As far as technical and organisational matters were concerned Zweckel and Steden belonged to the organic department Ludwigshafen and were subordinated to AMEROS only because he was the chief of the department mentioned. This survey alone shows that AMEROS could not have been plant manager even of one of these plants, because the plant management made it necessary that the person concerned was present at the locality because the social part of the organization of the plant could be handled correctly only if the plant manager was familiar with all pertinent details.

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			Buna Russland	Ch. F. Holten	Anorg. Dyhernfurth	
			I.G. Zweckel	Anorg. Gendorf	Anorg. Dyhernfurth	
			Ch. F. Holten	Oxydw. Italien	Anorg. Gendorf	Francolor
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			Buna Italien	Anorg. Dyhernfurth	Buna Frankreich	Anorg. Dyhernfurth
			Anorg. Dyhernfurth	Buna Italien	Buna Schweden	Anorg. Dyhernfurth
			Anorg. Gendorf	Ch. W. Hüls	Buna Italien	Anorg. Gendorf
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			I.G. Schkopau	Chem. W. Hüls	Chem. W. Hüls	
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CLOSING BRIEF AMBROS

But AMBROS lived at Ludwigshafen where Dr. ROSTER was already plant manager.

Already for reasons connected with time he was able to visit the rest of the plants only once or twice every three months.

"Dr. AMBROS, whose burden of work I was to some extent able to judge, since he had his head office in Ludwigshafen, could not possibly have added to his tasks in all parts of the Reich that of a Betriebsfuhrer in one or even in several of the works for which local residence was a condition", this is the statement of an expert in the field of social welfare, the official of the central IG social office, Dr. REISS (O/-Doc. 120, Exh. 28/ volume I/page 53)

In order to show again the burden of work of Dr. AMBROS a table on the actual field of work of AMBROS is attached as enclosure, which has to supplement the survey with regard to space in volume IA, O/ 102, Exh. 18, page 11.

To this the fact has to be added that AMBROS, on account of his being the responsible chemist of the organic chemistry within the I.G. was also responsible in the plants concerned for the technical safety of the plant, and in this connection we would like to point out that for instance a heavy explosion in the carbide factory at Ludwigshafen as a consequence of "the constructive development of the continuous carbide furnace of the world's most modern type and its introduction into practical industry" (O/ 108/Exh. 41, volume I, page 41) resulted in AMBROS' being made responsible for this accident by the public prosecutor, because unfortunately several persons were killed through this explosion.

CLOSING BRIEF AMBROS

On the other hand, however, it is only AMBROS' merit, that he, in spite of "failures and set-backs went on with the work with this type which he recognized as the best one, succeeded in completing the continuous carbide furnace to the high technical perfection of today". (Doc. O/ 108/Tsh. 41, l.c.)

This is one side of the tragic moments in an inventor's life to which the researchers of the world are subjected.

In any case, if one considers the situation in general it becomes clear that procurement of and care for the labor force did not fall under the competence and field of responsibility of AMBROS. During the war years the social demands and the situation of the labor utilization in Germany were handled only by governmental authorities or by the local authorities in the plants proper and could be solved by these offices only.

III. In the individual works which, with regard to technical matters, were subordinated to AMBROS, the social conditions were not in such a state that AMBROS was forced to interfere or that he could have interfered.

The plants included by the prosecution in the indictment

1937	1939	1941	1943	1941
Schkopen, Gerdorf,		Dyhernfurth,	Falkenhagen	and Auschwitz

were newly erected by the I.G.

At first it has to be ascertained "that the social questions (in these new works) were handled according to the same principles as in the mother works of the I.G."

CLOSING BRIEF ALBROS

It is even a fact "that better and more work in the social field could be carried out in the new works than in the old ones, because the new installations were erected in accordance with the most modern principles and took a privileged place as far as financing and allocation of material was concerned Dr. ALBROS paid great importance to the fact that the organizational and social tradition of the I.G. was maintained in these new works."

It is true, however, that ALBROS "was not plant manager, far less official in charge of social matters in these works".

If he, during the last years of the war, participated more frequently 'in the conferences of the plant managers to represent the interest of the social organization of his works, he did that only because' the Betriebsfuhrer's of the building works were themselves not members of this conference which for technical reasons had to be kept comparatively small". (S/L-Doc. 120, volume II, page 52/53*).

This is the actual reason for the fact that ALBROS discusses the works mentioned in his defense, although, as far as legal matters are concerned, he was not responsible for the social conditions in these works.

But just like ALBROS, on account of his pronounced social feelings, interfered at that time wherever he was able to help and where he knew that his aid was required, here too we would like to show that as far as the individual works are concerned ALBROS did always everything in his power to create humane living and working conditions for the workers of all categories. The defense can restrict itself to the essential matters

CRASINE BRIEF AEBROS

because only the essential matters were discussed with AEBROS during this part of his life which was devoted to work and only in the basic matters he was thus able, within the frame of the possibilities which war - time provided in Germany, to attempt to interfere.

CERTIFICATE OF TRANSLATION

14 June 1949

I, S.A. Hamburger, ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document CLOSING BRIEF AEBOS.

S.A. Hamburger

ETO 20062.

I

I.) Treatment of foreign workers in the Schkopau plant.

It is unusual to try to evaluate social conditions in a plant, employing thousands of workers, on the ground of the testimony of a single witness. According to the impression the only witness in the Schkopau case Joki~~x~~ Pierre Frossard has made during his direct examination in court during the session on 24 November 1947 (Record p. 4288) one could let this negative affidavit

(EI 7507 Lxh. 1351 vol. 69 page ⁸⁴~~110~~)

alone.

Nevertheless witness Frossard is discussed. The defense has submitted in a special document-book volume A and B considerable evidence for the social conditions in this plant. The result of a comparison of this evidence with the allegation of a single witness is significant in two ways.

CLOSING BRIEF AMBROS

1.) Objectively the allegations of witness Frossard are untenable.

Witness Frossard made in his affidavit as well as during cross-examination in court on 24 November 1947 (Record p. 4288) the following detailed statements about himself, the kind of his employment and conditions in the Schkopau plant. They are refuted in particular:

As to food and work the information of the Buna Works Ltd. Schkopau No. 128/43 dated 9 November 1943 (O.A.Doc.210, Doc.vol.II A, Exh. 59, page 57) about the vitamin action 1944 which, contrary to the assertion that food was differentiated according to nationalities, was extended "in the same manner" on "all the personnel....including foreigners". The fact has to be emphasized that Italian military internees were not fed particularly badly (Exh. 1351 p. 3 of original, par. 1) but according to an information of the Buna Werke Schkopau No. 6/44 dated 17 January 1944 "can get supplementary food...like German employees and free foreign workers."

(O.A. Doc. 211, Exh. 60, Doc.vol.II A, p.59).

CLOSING BRIEF AMBROS

It is not true that French workers were not allowed either to change their employment or to go back to France; According to information No. 50/42 dated 7 May 1942 there was a special "Directive for leaves for foreign workers" which was fixed for the entire Reich in accordance with the so-called Leave Ordinance. (O.A. Doc.208, Exh. 57, Book II A, P.49 a,f.)

Actually there were special trains planned within the official schedules, also to France; the use of these trains was made possible for the French workers by the management and appropriate furloughs were granted (Applications and passports for the special trains to France (Paris), furlough from 2 July to 25 July 1943 are to be handed in at the latest by 5 June 1943". (O.A.Doc.209, Exh.58, vol. II A, P.55; communication No.51/43 of 12. 5. 1943 signed: personnel office).

Medical care, too, was above reproach. E.g. the dispensary for foreign female workers was equal to German dispensaries of the same kind as to care, cleanliness and hygiene. (O.A.Doc. 214, Exh. 62, vol.II A, P.78).

A recapitulating report of the social department about the condition of the sick and the care for them at the Buna Works Schkopau was submitted to Russian authorities after the war and confirmed in all details the prominent care for all individuals without any difference working in the Buna Works Schkopau. (Cf. O.A. Doc. 220, vol. IIB).

Likewise the accommodations for foreign workers in Schkopau were sufficient. The French camp commandant of the dwelling camp Jean Marie Lecirf, confirmed as such by American military authorities characterized the dwelling camp for foreigners as a "model camp". (O.A. Doc. 217, Exh. 63, vol. II A, P.84).

CLOSING BRIEF AMBROS

In O.A. Doc. 203, exh. 64 the construction chief of the Schkopau plant gives a detailed description of building installations for German and foreign employees. (O.A.Doc. 203, Exh. 64, vol. II A, P. 22 a.f.)

During air raids all those working at the Schkopau plant went to the shelter. There were special rooms in the shelter for them regardless whether they were German employees, foreigners, PWs or civilians. (O.A.Doc.212, Exh. 65, vol.III A, P.63).

In contrast to witness' Frossard's testimony it has to be specially mentioned that the plant management never recruited "by force" French workers who then allegedly arrived in Schkopau without any possession in May 1944. Rather "at the beginning of 1944 the departments of Eure and Orne in France were assigned" to the official in charge of the social department Schkopau, Boes", by the Labor Allocation Office, Land Labor Office Erfurt, for recruitment of labor", (O.A.Doc.207, Exh.55, vol.II A, P.46). This was a measure ordered by the state out of which the industry tried to make the best. The management of Schkopau had "from the very beginning the intention" not to recruit workers but to hire them on an absolutely voluntary basis. Dr. Boes therefore suggested "Social welfare offices"; his trips to France had the aim to establish them. This "intention, however, was not executed because of the invasion." (O.A. Doc.207, Exh. 55, P.46/47). It has to be mentioned that this entire action "had been discussed with French labor allocation agencies and before the beginning of the action with Mr. Joki Pierre Frossard."

CLOSING BRIEF AMBROS

"I was (Dr. Boes) on very good terms with Mr. Frossard" (O.A.-Doc.207, vol.II A, Exh. 55, P.47).

2.) The allegedly bad conditions did not become known at least to Ambros.

Contrary to Mr. Frossard's attitude Mr. Bonvilain the French shop steward assured repeatedly a Schkopau manager "that the French had no complaints about anything". (O.A.-Doc.216, Vol.II A, Exh.67, P.81) "The fact that all the Frenchmen gained the impression and were convinced that they were treated humanely in every respect, is shown by the fact that the management of the plant and the leaders of the factories received written invitations for their performances."

(O.A.-Doc.216, Vol.II A, Exh. 63, a.a.O. P.82).

Frenchmen were working in responsible positions and that in spite of extensive opportunities for acts of sabotage, they never made use of them." (O.A.-Doc.216, Exh.63, a.a.O. P.83, cf. also O.A.-Doc.215, Exh. 66, P.79).

Even the witness Frossard gave elusive answers to the question whether he had spoken with the people from the management about conditions condemned by him or whether he himself did anything using the importance of his name "Frossard" to improve these allegedly bad conditions. (Rec.P.4314 foll.).

How could Ambros know about the alleged bad conditions if even the management itself was not informed about them, when he came only at long intervals for a

CLOSING BRIEF AMBROS

short visit to Schkopau and nobody complained to him ? (O.A.-Doc.202, Exh. 52, Vol.II A, P.3-11 and O.A.-Doc. 204, Exh. 56, Vol. II A, P.23-30) may therefore the photos of the Schkopau plant taken in 1942 give the court the impression of a picture as seen by Ambros.

3.) Ambros did not have any influence on measures taken by state or political agencies which interfered with the social sphere of the plant.

Witness Frossard stated in his affidavit that he had been arrested on 29 September 1944 on the ground of an information.....for active resistance and that he came to Laut-hausen later on (Exh. 1351, para.1). During his examination in court he completed his statement by saying that his arrest was caused by the Gestapo. This fact in connection with the close relations Ambros had with witness' Frossard's family because of long lasting friendly business relations, is a proof how slight Ambros' influence on measures of official or political agencies actually was. Likewise Ambros could not prevent witness' Frossard's transfer from the "Chantier de la Jeunesse" to Germany (cf. rec. P.4307/4308), although Ambros obviously took a special trouble about witness Frossard for personal reasons; he also tried everything later on to liberate Frossard from the Gestapo confinement.

But it would be a mistake as to the situation if one would reproach Ambros with this fact. During the war the possibilities of an influence of a private citizen had limits which could not be transgressed. Thus Ambros had intervened without result for the liberation of an engineer of the ^{SCHKOPAU} ~~Ludwigshafen~~ plant who had been sentenced to 5 years penitentiary for undermining the morale of the defense forces

CLOSING BRIEF AMBROS

this he did in such a manner that it caused the defense counsel of the engineer to make the following remark:

"I am afraid that if Mr. Ambros continues to intervene on your behalf in this way the Gestapo will one day come to fetch him, too." (Q.A.-Doc.129, Vol. IA, Exh.50, P.116).

The majority of the foreign workers took this special situation into consideration also in their relationship with Germans. They accepted their being workers in Germany as their fate and never complained of their situation being unnecessarily aggravated for instance through severity or neglect on the part of the plant or the camp management." (O.A. Doc.215, Exh.66, Vol. II A, P.79). Only by taking this reality into account could the local management make the work of the foreign employees as tolerable as possible, e.g. by considering within the plant... contrary to Frossard's allegations the employment of workers according to their professional training, professional tendencies and mental capacities. That the management tried to do that is proved by O.A.-Doc.216, Exh. 67, P.81, O.A.-Doc. 215, Exh. 66, Vol.I A P.79, as well as by witness Frossard himself who being a student of chemistry was employed in a lab. (Record P.4308).

CLOSING BRIEF AMBROS

II. Employment of internees at the Gendorf plant.

The Montane plant Gendorf owned by the Reich was leased to Anorgana Ltd. merely for management purposes. (NI-4990 Exh. 637, Book 35, Page ¹³² 426). There, too, the internal conditions, in so far as they did not concern technical production matters, did not belong to Ambros' competence because Ambros was manager of the Anorgana Ltd. which took care of several Montane plants. Actual local manager was Dr. Wittwer. (O.A.518). Therefore logically Dr. Wittwer was made responsible when an American Interrogation staff under Lt. Col. Hoffman (investigator) during several days of interrogation examined in May 1945 the employment of foreigners and CC inmates at the Gendorf plant during the war. (O.A.Doc.No.509 Book 5A, Page 40 Exh.125).

The fact that this investigation resulted in a complete exoneration of the manager Dr. Wittwer is significant as proof that also in the case of Ambros he can not be made responsible for the actual conditions as to employment of labor in the individual plants. Nor does it give a clue what Ambros as chemist and technical chief of all these many plants could have done. In all cases Ambros always acted according to his best knowledge and belief and tried in all cases all that was humanly possible to make model plants, also in social respect, out of plants he supervised technically. Where there are differences as to actual results they are caused by local or time conditions which in Germany during the war were often stronger than the men who tried to form them.

CLOSING BRILF AMBROS

CERTIFICATE OF TRANSLATION

14 June 1948

I, Stanislaw S. Feldman, Civ. No. STO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document,

Stanislaw S. Feldman
STO 1043

1. The labor allocation of inmates in the Gendorf Works was the result of "joint actions of the Ruk of the Goebchen, of the OKH and of the Main Administration office of the SS".

The first labor allocation of inmates occurred in Gendorf on 4 October 1943 (o.A.514, Exh.No.130 volume 5 A page 51) with, at first, appr. 70, and later with a total of appr. 250 inmates. This number was relatively small. "The Anergana plant used very few concentration camp prisoners because, according to Dr. AMBROS, it found that the concentration camp prisoners did not meet the standards of the I.G.Farben so far as working and technical ability were concerned" (o.A.511, Exh.127, Vol.5 A page 44).

But as a result of the change in the so-called DL method which was necessitated by technical shortages (see trial brief paragraph poison gas, section ~~OF~~ number 3, page 106), there was an acute shortage of labor, in particular of skilled workers, which could not any more be covered by the labor offices because of the general labor shortage in Germany during the war. On the other hand in the very year 1943 it was decided by the highest Reich offices handling this matter during a conference at the Fuehrer Headquarters concerning "the state of the poison gas production" to "give active support" to the "3 essential plants: "

1. "DL installation in Gendorf,
Tabun and Sarin I installations in Dyhernfurth
and Sarin II installation Falkenhagen"....

This support regards

1. the labor allocation for construction and, above all, for production
2. the allocation of material for construction and assembly..."

The support was then secured "according to position I" "through joint actions of the Ruk, of the Goebchen, the OKH and of the Main Administration Office of the SS". (NI-11 105 Exh.o.A.15 original last paragraph of the appendix: The state of the poison gas production of 20 March 1944). These actions, which were obviously

Closing Brief AMBROS

agreed upon and then undertaken by the authorities mentioned above, were also the cause of the labor allocation of inmates in Gendorf. The "breakdown of the crew of the Anorgana" of August 1944 shows indeed "that the inmates under rubric B" repair shops and assembly plants ... Ester (that is the DL installation in reconstruction) are listed as a total figure of 110 workers. (III-2882 Exh. ¹³⁵ Vol. ⁶⁹ page ⁵¹ ~~135~~). This is confirmed furthermore by the planned visit of Obergruppenfuehrer POHL to the Gendorf Works (file note concerning concentration camp inmates of the labor allocation office Gendorf of 9 November 1943 Doc. NI-2744 Exh. ¹³⁵ vol. ⁶⁹ page ¹⁰¹ ~~135~~). Pohl's instructions were, obviously, to examine the possibilities and the conditions of labor allocation of inmates for the construction of the DL installation which had been decided by the highest authority. AMBROS was not present during Pohl's subsequent inspection in Gendorf. On the other hand it was, therefore, for the plant manager Dr. Wittwer the obvious thing to do (later in December 1944) to send to AMBROS a draft for a letter for forwarding to Pohl concerning guards for the 250 inmates assigned to work. (III-4051 Exh. ¹³⁵ vol. ⁶⁹ page ¹⁰⁷). It is, however, worth while noticing that AMBROS refuses to forward this letter to Pohl. It did, indeed, not reach Pohl via Ambros, but was sent as a draft to the concentration camp Dachau which placed the inmates at disposal. It was the camp Dachau which forwarded the contents of the letter to the Office Group WVHA (III-4051 letter of the concentration camp Dachau, Kommandantur, of 27 December 1944 with reference to "draft of letter at your hands, of 12 Dec 1944 to Director Dr. AMBROS Ludwigshafen", addressed to: "Firm Anorgana G.m.b.H. Gendorf, attention Dr. Wittwer Gendorf" received 2 January 1945). With regard to this correspondence it is, furthermore, characteristic that the reason why AMBROS does not contact Pohl is that "he is not going to handle these problems". If AMBROS

had had such close contact with Pohl, as the Prosecution would like to charge him with, this attitude of AMBROS would not be understood. He is generally not acquainted with matters regarding the SS activities, because he replies with the question: which is this office concerned? Then I would write (he meant: in your place, Dr. Littner's place) to him to that office."

- 2.) Only the SS camp command of the concentration camp was, in every regard, responsible for labor allocation of inmates.

The substitute plant manager of the Anorgana plant in Gendorf confirms explicitly from his own experience that the I.G. had "no influence on the allocation of the prisoners. Thus I myself tried once in vain to have an inmate, who was assigned to labor in Gendorf, transferred to the status of civilian worker I discussed the matter with the camp commander of Dachau during a visit of the SS-camp management of Dachau in Gendorf on 19 May 1944 ... It was rejected by decision of the camp management." (O.A. 510 vol.5 A page 42 Exh.126). All inmates who could be interrogated agreed on this subject. Thus the inmate Jauss (the same whom the substitute plant manager requested as a civilian worker from the camp management) states "the plant management of the I.G. did not have any authority over the inmates and also no influence whatsoever on the treatment of the inmates by the SS-guards (O.A. vol.5a page 54 Exh.130.).

The inmate Haubisch states, in the same manner: "The Anorgana could do nothing about it (he means the disappearing of food delivered by the I.G. through the SS) as it had nothing to say in the camp. (O.A. 516 vol. 5a page 55 Exh.132).

This circumstance, which was considered as very unfavorable by the inmates, was also in complete opposition to the intentions of the plant management. Thus the plant management made efforts

to employ skilled workers, who were inmates, in their capacity as skilled workers. This would, however, have involved an extensive dispersment of the inmate detachments, which would have resulted, in its turn, in an increase of the guarding units, in accordance with SS regulations, as in Gendorf only one guard was assigned for 25 inmates. But the SS did, on the other hand, not agree to let the inmates work separately on their working places, if necessary without or with a smaller number of guards. "It occurred indeed frequently that for this reason a part of the inmates could not march to work." (NI-4051 aaO 41 1. paragraph). The plant management considered therefore an increase in the number of guards as the only way out. This is the meaning of plant manager Dr. Wittwer's request of December 1944 to the SS-Office concerned (NI-4051, Exh. ¹³⁵⁷ vol 69 page ¹⁰⁷ ~~137~~ and ~~140~~).

The SS-regulations contained also very explicit instructions concerning details of the care for inmates, like payment of bonuses, fixing of food rations, etc. (see NI-2744, Exh. 1356 vol 69 page ¹⁰¹ ~~136~~, a file note of the commercial department of the Anorgana, of which AMBROS had no knowledge, as can easily be understood. Medical care was also given according to detailed and binding instructions which the camp administration of the concentration camp Dachau gave to the plant management (NI-4160, vol. 69, Exh. 1354 page ⁹⁸ ~~135~~).

3.) The assignment of inmates of the Main Camp to work in the plant Gendorf "was a prize".

The result of the investigation of the American investigating committee mentioned above was so favorable that Col. Hoffmann, the chief of the investigating staff was obviously moved and said explicitly to the plant manager "that he was glad to be able to tell me (Dr. Wittwer) that the

Gendorf plant was unique in their treatment of the foreigners and the concentration camp inmates, that no excesses had occurred in the treatment of the foreign workers and that he expressed to me his thanks in the name of the Allied." (o.A.509, Exh.125, page 40). A chief of investigation of the same committee compiled his impressions gained at that time in a letter of 24 September 1947 to a Swiss attorney, stating: I do remember that the general opinion of the "veterans" of the concentration camps whom I interviewed was that to be selected to work at Anorgana was a prize, since it was regarded as the best assignment so far as food, working and housing conditions anybody at Dachau could get.

A.O. 511 vol.5 A page 44 Exh.127).

The rest of the documents in o.A.volume 5a is giving still more details regarding these facts: o.A.512 Exh.128 page 46, report on the treatment of foreign workers in Gendorf with the result: "The pay was made according to the Tarifs of the chemical industry in Bavaria ... Additional premiums were given up to 30% of the tariff salary."

o.A.516, Exh.132, affidavit of the inmate Schalla "our working time was the same as the working time of the free workers, the working speed was normal."

O.A.517, Exh.133, affidavit of the inmate Reissner who during his work at Gendorf "felt again like a human being and considered his work there almost as a desirable future". Page 62, also o.A.515, Exh.131, Affidavit of the inmate Hacubisch page 55), and: 513, Exh.129 and 514, Exh.130.

Probably impressed by the results of the investigations of that time which were compiled in a report dealing with the essential points as "recruiting and/or allocation of the foreign workers, lodging and food, social care and provisioning of the inmates by the SS units, occupation, wages and medical care,

(o.A.509, Exh.125, Vol. V A page 41), and which was submitted to the Prosecution as so-called Miller report, was the reason why it did not include also labor allocation of inmates in Gendorf in its charges under count III of the indictment.*)

But does not AMBROS have to be held as much and as little responsible for the social conditions in Gendorf as in other plants which were under his technical direction? Why should not AMBROS have attempted, as man and as official of his concern, to make his influence felt in the Gendorf case just as much as in other plants and why should the differences be explained exactly with his person, with his activity and with his attitude? Isn't it, in all cases, the same Otto AMBROS who has always the greatest understanding for social conditions and lends his help as much as possible?

It can be understood that, in view of the nature of his task, his activities in this connection are restricted to the essentials, to large outlines; thus he advocated as manager of the Anorgana that the profit shares of this company be paid to "a special fund for assistance of the staff as insurance against illness and similar matters for the workers of these plants."

(oA 507, Exh.124, p.33).

III. The attitude of the Luranil Construction Company m.b.H. with regard to labor allocation of inmates.

It is a complete misunderstanding of Otto AMBROS' field of competence if, during cross-examination, he was shown by the Prosecution files of the Luranil Baugesellschaft of the construction places Dyhornfurth or Falkenhagen, in order to prove his

*) Another example of complete misunderstanding of competences is the fact that the Prosecution submits to the Gendorf case instead of this a document NI-10695 Exh. X Vol. 4 p. 123, a file note of the NSDAP Kreisleitung Muehldorf regarding a maternity home of the DAF office (speaking of the "initiative of the Kreisobmann of the DAF") and in the second place, the maternity home mentioned there is a matter regarding the DAF, constructed on real estate not belonging to the I.G. and with no connection whatsoever with the Anorgana plant Gendorf (section 2 page 123).

participation in procurement and in organization of the labor allocation of inmates of concentration camps.

Dyhernfurth and Falkenhagen are the two plants for the production of the two new poison gases Tabun and Sarin which were constructed during the war under the technical overall direction of AMEROS by order of the Reich and which belonged to the Reich; they were already discussed in detail with regard to production techniques in the part "poison gas" of this trial brief (see above paragraphs ~~DE~~ number ~~II~~ page 103).

1.) The labor allocation of inmates is a result of measures and conferences of the highest Reich offices.

As far as inmates were assigned to labor in these plants, it is, therefore, a result of the measures decided upon in the Fuehrer Headquarters quoted in the above, as was the case with regard to the DL installation of the Anorgana plant Gendorf (see above under "Gendorf" number 1). It was therefore, already for the reasons mentioned above, under paragraph I number 1, not started by AMEROS and also not suggested by him. If a letter of the SS-Main Economy Administration Office, Office Group D, concentration camp, of 31 July 1943 to the firm Max Haaf, head of construction Falkenhagen, starts in the following manner:

"As a consequence of the conference between SS-Obergruppenfuehrer and General of the Waffen-SS Pohl and Dr. AMEROS, SS-Obersturmfuehrer Grimm visited on 20 July 1943 the grounds in Falkenhagen near Fuerstenwald jointly with Dr. Schaefer, Engineer Wehrich and Architect Burs" (NI-14291 Exh. 1927 ~~vol. — page —~~), this conference between Pohl and Ambros can only have been the result of instructions by Ruk (Reich Ministry for Armament and War Production) which was responsible for the poison gas production and which was obviously, in summer 1943, forced to take all measures

for the safeguarding of production of the most essential poison gases/^{because} of the unsatisfactory state of this production. (NI-11105 Exh.o.A.15, last page). AMEROS had therefore to inform Fohl with regard to Falkenhagen. The I.G. did not take any initiative in the labor allocation of inmates, if only for the reason that it was only acting as managing company for the poison gas production in the Montan installations belonging to the Reich.

2.) The I.G. had no influence on the procurement of employment.

The I.G. considered its influence in the very field of procurement of employment as very small, which is demonstrated by its opposition against strong ties with the poison gas plants in Dyhernfurth, in Falkenhagen. During the conferences dealing with the contract regarding the installation Seewerk and the "transformation of the Montan lease contracts to payments of rent" it was stated, at the occasion of a conference of the Aufsichtsrat of the Anorgana G.m.b.H. on 23 August 1943 in Heidelberg, (only shortly after the letter quoted in the above, Exh. 1927 of 31 July 1943), that the I.G. was not in a position either to undertake "full liability for the payment of the fixed rent on behalf of the persons or parties co-operating with I.G. in the performance under the contract, in view of the insecure "conditions of today regarding labor allocation of foreigners, Poles, prisoners, unskilled workers and workers allocated to us, whom we (the I.G.) can not choose." (NI-7377, Exh. 645, vol.36, p.37 of the original paragraph last but one). In this conference participated, on behalf of the I.G., among others ter Meer, Knieriem and Ambros, together with representatives of the Montan, respectively of the OKH. It was also decided in the same conference to charge with the management of the installation Seewerk (Falkenhagen) a managing company with the title "Turon G.m.b.H." for account and on behalf of

the Montan; this company was to be founded by a management contract to equal halves by the Montan and I.G." (Exh. 645, aaO. No. 1 page 1 of original).

The letter of 31 July 1943 (Exh. 1927) is, however, addressed to the firm Max Baef, which had been entrusted with the construction of the not yet complete part of the poison gas plant (installation Seewerk) as a firm quite outside of the I.G. This firm was therefore also the employer and it was therefore also approached by the SS. Ambros could, therefore, never have had any knowledge of the letter.

This can only be understood if one realizes the legal structure of I.G. position in Falkenhagen and Dyhernfurth:

A. FALKENHAGEN (Sarin installation Seewerk)

It results already from the document mentioned above (Exh. 645, NI-7377 Vol. 36 page 37) that the founding of a managing company "Turon" was only thought of in August 1943. This company changed subsequently its name to Monturon G.m.b.H. (as it was found out that there existed already a firm Turon in Germany). The managing company was, however, never really active, as the Sarin installation Falkenhagen (Seewerk) was not completed at the end of the war.

1.) The Luranil-Baugesellschaft m.b.H. is a mere construction firm.

The I.G. was charged with the construction of the installation by the OKH, order number 3/IX -4888-9026-43, (therefore 1943). The I.G. had to construct this Sarin II installation in its own name, however for account of the OKH ... on the grounds near Falkenhagen ... which belonged to the exploitation company for Montan Industry G.m.b.H. (NI-8782 Exh. 647 vol. 36 page 3 of original). According to number 9 paragraph 2 of this construction order the I.G. was "authorized to employ at the carrying-out of the construction project the Luranil construction company with its

seat in Ludwigshafen which belonged entirely to the I.G., and to charge this company in particular with the entire accounting with the UER." (Exh. 647 aao, page 6 of original).

The Luranil carried out this construction order, that means it carried it out merely as a construction firm. This capacity of the Luranil as construction company and not as employer became obvious during the interrogation of AMEROS when he answered questions of the court. (cf. Trans. page ⁸¹⁴⁰ 8214). This is confirmed in section 9 paragraph 1 of the quoted construction order Exh. 647 page 6 of original. Luranil is charged with the "work on the project (draft, an estimate of the entire expenses (sample) liable to examination, with drafts for the construction and for the handling of deliveries and labor, placing of the order, the overall direction, supervision of the construction, handling of the bills and establishing of a final account." Luranil therefore passed on its own construction orders to "suitable and reliable well-known enterprises." It had in this connection "to handle all construction orders ... under participation of Reich Minister Speer who had power of attorney for the constructions." (Exh. 647 aao section 7 last but one and last paragraph page 5 of the original). One of these firms was in Falkenhagen, the firm Max Haaf, which was approached by the SS/WHA with regard to labor allocation of inmates.

Only these firms which were carrying out the constructions had their own labor forces, their own construction machinery and equipment, own tools etc., but not the Luranil.

2.) AMEROS was not the plant manager responsible for the individual plants.

For the rest "Dr. Gorr was generally active as a plant manager

in Falkenhagen. Gorr "charged the Chief Engineer Bilfinger as commissioner with the management of the plant" (NI-7618 Exh.648 vol.36 page 54). Bilfinger was, as assembly chief, the responsible local official for the Luranil, while Dr. AMBROS as manager retained only the overall direction of the Luranil, in an honorary capacity as a founder of the Luranil G.m.b.H. in Ludwigshafen jointly with Dr. Eymann as mechanical engineer and chief engineer Sante as construction engineer. (With regard to the legal structure of the Luranil cf. NI-4988 Exh.355 vol. 13 page 69). May I mention again in this connection that the founding of the Luranil served a double purpose "firstly, to prevent at certain projects which the I.G. constructed for the account of a third party, that the I.G. appears openly, in particular at the construction place, on its own; the second purpose of the founding was to create a sharp separation between projects belonging to the I.G. and other projects and to obtain by this a detailed and complete estimate of expenses with regard to projects alien to the I.G." Exh.355 aaO. page 1 of the original. As a logical continuation of this thought "the construction contract was in each case concluded with OKH, the remainder of the business correspondence (money requests etc.) was, however, handled by Luranil" Exh.355 aaO. section 5.

B. DYHORNFURTH.

This clarification of the legal structure and of the actual tasks of Luranil is important also in order to understand the conditions in Dyhornfurth, because here, like in Falkenhagen, Luranil was the employing firm which passed on the construction orders to the individual firms. The documents submitted by the Prosecution concerning the case Dyhornfurth regarding labor allocation of inmates (Exh.1928, 1929, 1930 and 1931) contain a correspondence between Luranil and the construction firms, which is a mere

accounting correspondence, as results from the above-mentioned restrictions of Luranil's activities. The labor allocation of inmates was in Dyhernfurth the result of a negotiation between Ruk and OKH, particularly as the Organization Todt had also taken over the construction place via its organization armament constructions (Ruebau). (Q. 726, Exh. 216, vol. C p. 24).

This was the reason why on the "circular to all construction firms of the installation Dyhernfurth" regarding accounts concerning forced labor" of 30 October 1944 the "OT construction management" signed left on the bottom on the letterheads of Luranil (NI-14300, Exh. 1929):

for "Hauptfrentfuhrer" Altrichter

(NI-14310, Exh. 1928, distribution, last page).

The contents of the documents do not have to be discussed, as they concern in the main essential problems of accounting which were handled by the local business department of the Luranil, namely by an attorney, Dr. Schaefer, who was not employed by the I.G. (Luranil had partly its own personnel - Exh. 355 NI-4988 section 4). Even these accounts regarding forced labor could only be "decided in a unified manner by the Gebebau". (Exh. 1928, NI-14310). The Gebebau also carried on the negotiations "with the SS-offices concerned" (Exh. 1928, a.a.O. page 6).

AMBROS had no knowledge whatsoever of these matters. He could not even handle these administrative tasks, according to the situation at that time. These things concerned possibly the manager of the individual plant, who was, for the managing company Anorgana G.m.b.H. Dyhernfurth, Dr. Palm o.A. (724 Ambros Doc. B ook C page 20 Exh. 214). Chief of the Luranil construction place Dyhernfurth was the Prokurist Engineer Schmal, o.A. Doc. 726 vol. Ambros C page 24 Exh. 216).

The assembly chief was chief engineer Bilfinger, who went later on to Falkenhagen. Bilfinger also confirms that Schmal "represented the Luranil construction firm G.m.b.H., construction site Dyhernfurth, at all authorities as OKH, GBChem, Armament Command,

Labor Office, etc. and that he acted as liaison between the local construction management and the assembly management as well as the planning department." (O.A. 727 Exh. 217 Vol. Ambros C page 26).

IV. Labor allocation of POWs.

The POW was outside of the field of competence of the employing firm, in the same manner as the prisoner. He was under the jurisdiction of the Wehrmacht. An officer was assigned to each POW camp as responsible head of the camp. I may refer in this connection quite generally to the general report concerning labor allocation of POWs (Defense Exhibits in the PW volume). I only want to state, in this connection, that within the production plants in Ambros' field of activity no infraction against the Geneva Convention occurred. No POW was assigned to work in the poison gas production.

These restrictions were not in force regarding labor allocation for assembly and construction work. With regard to such allocation of POWs in a Buna plant, an explicit authorization had been granted by the Reich Ministry for Economy (Schneider Doc. Exh. 49). The POWs also make very favorable statements concerning their treatment in all these plants: In the plant we were treated decently (HI-11 708, Pres. Exh. 2466); another witness who was interrogated in connection with the conditions in the Auschwitz camp Monowitz, stated: "I myself, that means as a POW ... had no actual complaints regarding the manner I was treated in Auschwitz. I do not complain about the treatment noted out to British soldiers (transcript page 3708).

CERTIFICATE OF TRANSLATION

15 June 1948

I, Helene LALLEMAND, AGO B 398038, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Helene LALLEMAND
AGO B 398038.

K.

A U S C H W I T Z

After the outbreak of the war it became evident as expected that the Buna production was not sufficient for a war.

The IG was compelled to build a third Buna plant in the East which was protected against air attacks. This was the reason for the inspection of sites at Upper Silesia on 12 October 1939 (participants: ter Meer, Ambros and Santo) (OA-Doc. 301 Exh. 68, vol. III A S.1)

Only for a short period after the completed war against France was the forcible pressure exerted by military and political offices relaxed.

The IG decided immediately "despite the extensive planning work" (OA 302 Exh. 69 page 8) to discontinue the construction work which had already been started, because "the pre-requisites for the carrying out of this project had been changed" (OA 302, q.a.o. page 7) (discussion at the Reich Office for Economy on 5 July 1940). Even the traces of the construction site were immediately removed. (letter of 12 July 1940, OA-Doc. 303 Exh. 70 page 9).

However, after the air battle over England in autumn 1940 which was lost by Germany the same governmental offices again planned the construction of a third plant and this time with insisting urgency.

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The IG, however, proposed against the arguments of all air strategists to attach the third Buna plant to Ludwigshafen.

By proposing this it hoped to have finally solved the question of the expansion of the Buna production.

With the continuation of the war, however, the requirement of material for the waging of the war increased and simultaneously the pressure of the responsible offices for an increase in production.

Now, a fourth Buna plant was to be built after all.

This was the situation with which the IG was confronted when, at the end of 1940, the erection of a Buna plant in the East was again taken into consideration. As things stood at that time, the IG, as the only Buna Expert had to be content with this situation.

KI. The order of the Reich Ministry of Economy to erect a fourth Buna plant in "Silesia".

Already in October 1940 at the latest, the plans of the competent Reich Offices with regard to the "further expansion of the Buna installation to achieve a total production of 150 000 tons per year" were concluded to such an extent that they positively "decided" to erect Buna III at Ludwigshafen and "a plant in the East to be newly erected" in Silesia. (Urgent Letter of the Reich Ministry of Economy by von Hanneken to the I.G., attention of ter Meer of 8 November 1940, NI ~~11739~~ Exh. 1408 vol.72 P.1) **11781**

1.) The I.G. objects to the erection of a fourth Buna plant in the East.

During the session at the Reich Ministry of Economy of 19 October 1940 the I.G. was able to object to this erection of a fourth Buna plant in the East which had been ordered by the highest authorities by submitting, it is true, arguments involving reasons of private economy by stating" that the job of expanding the Huels plant from 40 000 to 60 000 tons per year and the construction of a new plant in Silesia involved thereby would represent a great burden, both with regard to construction costs and the amount of the cost price to be expected." (NI 11112 Exh.1413 Vol.72 P.23)

2.) The Reich authorities decide that the site of a fourth Buna work should be located in Silesia.

The Reich Ministry of Economy, however, decided against the reasonable propositions submitted by the I.G. In a second session at the Reich Ministry of Economy on 2 November 1940 the I.G.^{1st} commissioned (Exh.1413 a.a.O.)" to immediately clarify the question of the site (for the plant in the East, in Silesia, which was to be newly erected)

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so that in accordance with the suggestion of the Gebechem the date on which production can commence can be stated as January at the latest." (NI 11781 Exh. 1408 Vol.72 P.1)

- 3a) Ambros conducts the search for a suitable site within the Silesian area only in accordance with technical points of view and attempts to find a site with suitable energy conditions for the new plant.

A statement, which Ambros made on the occasion of a conference with representatives of Schlesienbenzin on 16 January 1941 shows Ambros' negative attitude to the decision of the Reich Ministry of Economy which, in opposition to the points of view of private economy represented by I.G., were dictated solely by military considerations resulting from the war: (NI 11784 Exh. 1411) "It has been finally decided to erect the third Buna plant with a capacity of 20 - 30 000 tons per year in Ludwigshafen - but the fourth Buna plant is to be erected in Silesia in spite of the fact that the costs for the erection there, which will amount to about 150 million marks, will be about three times as high as if this new plant would be erected as an expansion of Huels."

In its preliminary examination the prosecution has pointed out that the I.G. could have refused to accept this task on account of the hopeless situation on the labor market. - As answer to this it can be stated that it is possible that the I.G. would probably have been excluded as financing company - the task of the technicians and in particular for Ambros would have remained the same." In any case Ambros, as expert, and his staff of co-workers would have been consulted, if necessary, he would have been forced to participate." OA 330 OA EXH 209 Vol II C

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The old project Hattwitz was therefore no longer taken into consideration"..... "The considerations that Buna IV should as far as possible be erected in the neighbourhood of coal was supported by the intended purchase of Pless coal pits by I.G. The agreement for the purchase of the coal has already been exchanged and will most probably be signed on one of these days (16 January 1941). Taking into consideration this situation the map showed, that Auschwitz, that is the place between Anaschwitz and Monowitz south of the railway line, would be the most suitable one. It also seems as if a sufficient quantity of water would be available there. It is also to be assumed that sources of lime stone are available in the vicinity." These were Ambros' statements on 16 January 1941. (ZvK 1411 N3 11984)

The consultation of the map, it is true (OA 307 Exh. 84) shows that especially in the Auschwitz area there prevailed a very favorable combination of all energy sources and site conditions required to a great extent for a Buna plant. Ambros himself, with the aid of a diagram "diagram on the location of the raw materials for the I.G. plant Auschwitz" (OA-Doc.311, Exh. 78) convincingly explained this fact to the Court. (Transcript German page 7905 seq. engl. Page 7831) At the end of 1940 he sent an inquiry to the mayor of Auschwitz and had the results of the consultation of the map confirmed by the latter. Thus it is no wonder that the Landesplanungsgemeinschaft Silesia had already marked the Auschwitz site for an industrial plant, especially for a plant of the chemical industry in their plans (OA 308 Exh.75) and that another enterprise "the upper Silesia Hydrogenation Works had contemplated the same spot for their plant (OA-Doc.327 Exh.199) and had inspected this site". 16 January 1941 NI 11784 Exh. 1411)

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Ambros had discussed the site Auschwitz with Krauch already on 10 January 1941 (Krauch initiated a conference between Ambros and Dr. Simmat of the Upper Silesian Hydrogenation Works. (Exh. 1411 u.s.O.)

At that time the Berlin Offices must already have decided on Auschwitz for the plan Buna because on 15 January 1940 the I.G. sends a letter to the Water Construction Office Teschen with the following introductory text: "On the instructions of the Reich Office for Economic Reconstruction, Berlin, and the Supreme Command of the Wehrmacht we have to examine the possibility of setting up a new industrial plant for large-scale chemical production in the region of Auschwitz." (OA-Doc. 309, Exh.76, Vol. III A)

- b.) At the beginning it was unknown that per chance a concentration camp was located in the vicinity and this fact did not play a part in the course of the further examinations in connection with the site.

Until the 16 ~~October~~^{JANUARY}, the time when the search for the required site had already concentrated on Auschwitz to such an extent that now the only matter open to discussion was whether the favorable site conditions found on the map would prevail in reality on the spot itself, Ambros was completely ignorant of the fact that a concentration camp existed in Auschwitz. Only during the discussion of 16 January he learned by the way through the statements of Josephens, which were made after his own lecture, that a concentration camp would be erected in the direct vicinity of Auschwitz; in this connection, however, no additional opinion on a possible labor assignment from the concentration camp was voiced.

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Now, on 25 January 1941 Herr Faust visits Auschwitz and informs his chief, Herr Santo, at Ludwigshafen by telephone of his impressions. Santo writes down this discussion in a note of 25 January 1941 and hands it over to Ambros to be used at the session of commission K which was to take place on 30 January 1941 in which he cannot participate in person because he has to leave for Breslau. (OA-Dec.310 Exh. 77) The note contains no mention of the existence of a concentration camp at Auschwitz.

In the rebuttal the prosecution introduces a letter from Faust to Santo which was written by Faust on an official sheet of the Luranil Ludwigshafen in Dyhernfurth near Breslau. There is no doubt that the letter was written in Dyhernfurth because Faust called from there on the same day ("besides that I believe that I have informed you of the most important facts in my telephone conversation of today which I again summarize herewith"); whether the letter has been dispatched at all, or whether it was handed over a few days later at Breslau by Faust to Santo personally, a fact which may be assumed on account of the missing of a "received" stamp, is irrelevant. The witness Einfeld has stated that he had received the letter during a trip "during which Herr Santo submitted to Herr Ambros and to me a letter written by Herr Faust" (transcript German page 13744 engl. Page 13474) and that either during the night of 30 - 31, or more likely, during the night of 31 January to 1 February 1941.

* PE 2261 N3 15258

It is significant that the letter of 25 January makes mention of the concentration camp. But this fact is apparently being considered so unimportant that it does not appear in the file note and most probably was not mentioned during the telephone conversation.

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c) During the session of the Commission K the I.G. decided on Auschwitz as site for the fourth Buna plant. The concentration camp Auschwitz is not mentioned at all.

In any case it was not submitted during the session of commission K on 30 January 1941; this expert group, which assembled under Ambros as chairman and in the presence of ter Meer was not informed of this. Not one word is mentioned about the concentration camp Auschwitz or the assignment for labor of concentration camp inmates. On the other hand all expert considerations with regard to energy which were favorable for the choosing of this site are being mentioned. This is confirmed by the transcript of the session (OA 312 Exh. 79), by an affidavit of the person who wrote the transcript (OA 313 Exh. 80) and by the persons participating in the session. (OA-Dec. 314, Exh. 81, OA 315, Exh. 82, OA 316 Exh. 83, OA 317 Exh. 84).

Thus the I.G. finally decided on the site Auschwitz. The report of the session of 16 January 1941 on the discussion with Schlesien-Benzin is also not submitted during this session. (As shown by experience, documents are not presented during such big meetings.) The matter Schlesien-Benzin was not mentioned at all as far as a possible merger of Buna and Gasoline was concerned.

"If the utilization of inmates would have been a positive factor for us, I would have seen to it that it would be mentioned in the transcript", this is a statement by Eisfeld (German transcript page 13741, engl. page 13472/73). Only the consideration from the technical point of view was decisive for the selecting of the site. This is confirmed in the transcript of the 6th session of the commission K which was held at a later time "that this selection of the site corresponded to purely technical economic considerations only...."

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"The development of the last decades led to a more and more pronounced dependence of the large-scale technical installations of organic chemistry upon the most important raw material "coal". Therefore the Buna plant in the East had to be erected in the immediate vicinity of the Eastern coal, thus in Auschwitz. (Exh. 569 NI³²⁸⁸~~569~~, vol. 29) An additional proof for the purely technical reasons which led to the selection of the site Auschwitz is contained in a report on a discussion on 27 April 1942 (OA-Doc. 326, Exh. 93) in which Lr. Hoepke and Dr. Wirth explain that at the time concerned the following reasons led to the selection of the site Auschwitz:

- 1.) The Area Planning Board had requested that the fourth Buna plant be constructed in Upper Silesia.
- 2.) Good connections with coal mines (25 km)
- 3.) Location close to lime stone quarries (25 km) and to salt supplies (15km)
- 4.) It was necessary for purposes of water supplies and draining to construct the plant in the immediate vicinity of a major river (Vistula).

- d) An inspection of the site at Auschwitz confirms the reasonable decision, from the technical point of view and as far as energy was concerned, of the fifth session of the commission K.

Directly after the session of 30 January 1941 the site Auschwitz was inspected on 1 to 4 February 1941 and discussions were held with the Area Planning Board and the Government in Katowitz.

Ambros, Sonto, Lisfeld, and Giedekopf participated in the inspection of the locality.

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About this trip and all conferences Bisfeld compiled a report summarizing all matters on 13^A February 1941 (NI 11782 Exh. 1415). On 12 pages he discussed all questions, also that of labor utilization. In the Trial Brief of the prosecution a part from exhibit 1415 (NI 11782, vol. 7²) is being quoted. However, the important explanation, why the necessary measures have to be discussed with the Reichsfuehrer SS as Plenipotentiary for the strengthening of the German folkdom in the East is missing: "Furthermore it has to be clarified whether it will be possible to settle in the evacuated area Germans who have returned at such an early time that it will be possible to employ them for reconstruction work....

The majority of the foremen and most probably all masters will have to be resettled from the Reich proper to Auschwitz." No word is said about the concentration camp or about the fact that it will perhaps be possible to employ concentration camp inmates. This idea did not occur to them at all. It is true, the prosecution submits the "draft" of several reports of Santo which had been made sometime previously under NI 11785 Exh. 1412. The first report on the discussion "Breslau on 30 January 1941" with Faust proves that Santo must have left Ludwighafen some days prior to the session of 30 January 1941. In a second report on a conference on 31 January 1941 at the Area Planning Board the KZ and for the first time the "possibility" to employ concentration camp inmates are being mentioned.

However, it has not been proved whether this draft of 10 February has been written and distributed as report at all, because it had become superfluous by Bisfeld's lecture of 13 February. For the rest it has neither a "received" stamp nor has it been signed by Ambros. A participant in this session, Herr Skrizipreyk, of the Area Planning Board states "I do not remember the I.G.'s taking any interest in the employment of concentration camp inmates". (OA 318, -xh. 90).

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- 4.) The overall decision concerning site Auschwitz is made by the Reich Ministry of Economy and the Reich Office for Economic Expansion on 6 February 1941. The employment of concentration camp inmates was not discussed.

In spite of the fact that Ambros arrives in Berlin shortly *after* ~~before~~ his inspection trip to Auschwitz on 6 February in order to report to the competent and decisive offices, Reich Ministry of Economy and Reich Office for Economic Expansion about the "results of his activities in connection with site Auschwitz for the fourth Buna plant" (Exh. 1414 NI 11113) and in spite of the fact he learned in Auschwitz of the ~~exi-~~ existence of a concentration camp and even saw it with his own eyes - if only from afar - the "file notes" of ter Meer on these discussions at Berlin do not contain one word connected with concentration camp or even with an employment of concentration camp inmates.

Ambros submits only the known reasons connected with sources of energy which make site Auschwitz appear in such a favorable light: "Area....water, traffic.....coal....transportation.....lime stone....."(Exh.1414 a.a.O. NI-11113)

Is there a more convincing proof for the fact that for him the concentration camp was located only per chance in Auschwitz and that it did not play any part in his considerations, neither to a positive nor to a negative side, because he did not even have the idea that perhaps it would be possible to employ inmates from the concentration camp Auschwitz for the erection of the plant.

To him, in his capacity as chemist, such considerations would have been irrational. A Buna plant depends for the entire duration of its production upon enormous quantities of raw materials and waters which cannot be easily transported to a plant like labor forces which can easily be moved by settling them at the place of work or for the short period required for the erection by accommodating them in barracks, as is the case on all big construction sites in all countries, for instance during the construction of a Hydro-Electric Station.

CLOSING BRIEF AMBROS

On the contrary, Ambros and ter Meer submitted suggestions in a completely different direction:

- a) They again raised objections at the Reich Ministry of Economy against the erection of a fourth Buna plant in the East, the production of which would, if only for reasons of rentability, be limited to the time of war.

"There can be no doubt that the construction of the Buna plant at Auschwitz, where the production would get underway in the second half of the year 1943 at the earliest, represents a special risk. The beginning in Auschwitz is, however, four or three years behind the start of the mass production in Schkopau or Huls, and thus it cannot be foreseen whether the Buna plant at Auschwitz will be in full production long enough fully to write off the debt for the installations.

In addition there is the considerable increase in construction costs when compared to those of the intended maximum expansion of the Huls plant....") Exh. 1413 NI 11112, vol.72 page 23).

- b) And when talking to Krauch during the final taking into consideration of the advantages of the site Auschwitz, about its "coal basis" Ambros points out: the only difficult matter in Auschwitz is the procurement of suitable labor forces, it will be inevitable to start a large-scale settlement project in order to provide a home for German workers in Auschwitz".

(Exh. 1414 NI 11113 vol.72 Page 49-27)

Thus, the labor forces were to be brought to the plant. On the basis of the investigations, the Reich Office for Economy "decides" that Auschwitz will be the site for the erection of the fourth Buna factory.. It is intended to contact the Reichsfuehrer SS Himmler in connection with the settling of German labor forces at Auschwitz as soon as the first plans for the Buna Factory have been clarified.

CLOSING BRIEF AMBROS

No word is said about the utilization of concentration camp inmates.

After that Ambros goes on leave to Ettal (OA 329 Exh.209, Vol. ~~C~~, Page 8/9).

II. Goering's decree of 18 February 1941 to Himmler, to make available concentration camp inmates for the construction of the Auschwitz plant. (NI1240 Exh.1417, vol.72 Page ~~66~~ 39)

"Directive" Himmler of 26 February 1941 to the inspector of concentration camps that concentration camp inmates are to be employed for the construction and the intended construction at Auschwitz is to be supported by assigning inmates for work.

(NI 11086 Exh. 1422 vol.72 Page ~~114~~ 71)

While Ambros was still away from Berlin on leave, Goering, on 18 February, issued an order for securing the labor forces required and for the support of the workers for..... the following decrees:

CLOSING BRIEF AMBROS

CERTIFICATE OF TRANSLATION

14 June 1948

I, S.A. Hamburger, Civ. No. ETO 20062, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

S.A. Hamburger
ETO 20062

"Subject: Population policy for the Buna plant Auschwitz
in Eastern Upper Silesia.

In order to secure the manpower supply and its accommodation for the construction of the Buna plant Auschwitz, to be started at the beginning of April, and to be accomplished at the highest possible speed, I ask you to take the following measures:

- 1.) Fastest expulsion of Jews in Auschwitz and vicinity, especially in order to make their apartments available for the accommodation of construction workers for the Buna plant.
- 2.) To leave temporarily Polish workers, which may possibly be employed as construction workers, in their apartments occupied hitherto in Auschwitz and vicinity until the end of the construction work.
- 3.) To make available a possibly large number of construction-, skilled- and auxiliary- construction workers from the neighboring concentration camp.

The entire number of necessary construction- and assembly workers at the construction site will reach 8000-12000 men according to the attainable pace of work.

Please inform me without delay about directives to be issued by you in agreement with GBEchem.

signed Goering."

*) AMEROS did not know about this decree since it was directed as "top secret" to a limited number of competent Reich agencies: Besides Himmler, who was in charge of the CCs, to State Secretary Syrup (Labor Ministry, with subordinate Land and Local Labor Offices), to the Plenipotentiary General for the Coordination of the Construction Economy Dr. Todt (who was in charge of the Schmitt-Poles in Auschwitz and was in contact with OKW as to employment of PWs) and to the GBEchem. *

2.) But in connection with this, Goering's decree, AMEROS was informed by GBCham by a letter dated 4 March 1941 that Himmler "had ordered" the following already a few days after the Goering decree "on my request (the GBCham) and by directive of the Reich Marshal".

The GBCham informed the I.G. for the first time in a letter addressed to AMEROS dated 4 March (Pros. Exh. 1422, NI-11086, vol. 72, ^{Engl p 71} German p. 114), that on his -the GBCham- request and by Goering's directive the Reich Leader SS had ordered the following on the 26 February inst.:

- 1.) The Jews in Auschwitz are to be expelled as fast as possible, their apartments are to be made available and secured for the accommodation of construction workers of the Buna plant.
- 2.) No Poles who can be used as workers or construction workers for the Buna plant may be expelled from the vicinity of Auschwitz.
- 3.) The Inspector of Concentration Camps and Chief of the V and W Main Office has been ordered to contact the construction chief of the Buna plant right on the spot immediately and to support to any possible extent the construction by inmates of the concentration camp.
- 4.) SS-Gruppenfuehrer Wolff, Chief of the personal staff of the Reich Leader SS, is in charge of all problems concerning the Plant Auschwitz; he is appointed Verbindungsmann between the Reich Leader SS and the Plant Auschwitz.

These directives are so far-reaching that I ask you to make use of them on a possibly large scale and as soon as possible."

This decree of Goering with the executive directives of Himmler are the key-point of the employment of internees in Auschwitz.

- 3) But AMEROS neither did suggest it -his attitude, proved by documents, at the conference on 6 Feb 1941 at the Reich Economy

Ministry and at the Reich Office for Economic Expansion proves that (cf. trial brief) -nor caused it- at the critical period he was not in Berlin.* Neither did he participate in the later conference on the ground of Himmler's directive, s.4, at SS-Gruppenfuehrer Wolff's. He learned for the first time about these directives on or about 7 March 1941 the date of the reception stamp of his office on the quoted letter of GEChem.

The idea to employ internees for the construction of Buna plant has not even occurred to him at this time. (Cf. testimony of witness Dr. Alt, German Record p.13394, Engl.p.13296). According to this testimony he believed that the problem of labor supply could be solved by the local labor allocation offices by re-transfer of Upper Silesians who had been drafted for work to Western Germany and by settlement of German labor. (Exh.1414, NI-11 113).

He had opposed the criminal nonsense to expel Poles and Jews from the Auschwitz area (so-called evacuation zone 1) already at a conference with the local Regierungspraesident in Upper Silesia, Springorum, on the occasion of his inspection trip on 3 February 1941. (Exh.1415, p.6, NI 11782 vol.72 p.30) and also was supported there in that respect.

* He has never spoken to Goering and did not know Himmler at this time.

4. Supplying labor had become the business of the highest Reich authorities. AMBROS had nothing to do with it.

A document from a slightly later period, the 17 February 1942 (O.A. Exh.221, NI-11940 Vol.C) only confirms this fact. This is an official letter of the OKH to AMBROS concerning manpower supply for the construction project Montane plant Auschwitz. In this letter the OKH informs that "on 19 February 1942 an agreement was entered upon between the GEChem and the OKH (via I Ruo (Mun 3)) according to which the procurement of this manpower for the I.G. plant (fuel and Buna) as well as for the Montane plant is taken over by the GEChem; therefore both plants will be treated as an entirety as far as employment of manpower is concerned."

Thereupon the Montane installation had to be built in the Eastern part of the plant. The plant reports weekly the number of its workers and its demand to the labor office and the GEChem., all that according to the directives.

If a superior Reich agency urges that certain productions have to be finished on certain dates and on the other hand these requests cannot be complied with because the necessary manpower is lacking then it is but consistent that the State agencies should take care of the manpower supply. In Auschwitz the production dates had all deadlines.

III. Fixing of the highest urgency priority for the construction project Auschowitz.

Already the Goering decree mentioned that the construction of the Buna plant IV has to be accomplished at the "highest possible speed" (exh. ¹⁵¹⁷ ~~1100~~, NI-¹²⁴⁰ ~~11701~~, vol. 72, p. ³⁹ ~~2~~). The detailed instructions of the GBCham was sent to AMBROS by express letter dated 25 February 1941:

"Your construction project is among the most important bases of supply for the war economy. In the new regulation of urgency priorities ordered by Field Marshal Keitel your construction project has the highest one. You will receive details and executive directives from my agencies yet. On my request the Reich Marshal has especially emphasized again a few days ago this urgency by special circular decrees to the participating highest Reich authorities; he is particularly interested in the progress of defense economy tasks given to you. In these decrees the Reich Marshal has made it obligatory for these participating agencies to supply immediately workers and skilled workers needed by you even at the expense of other construction projects important for war economy. I expect therefore from you that considering such special emphasis on the importance of your task you will do your best to start production as soon as possible regardless of costs of any kind. Since it may be expected that the necessary manpower can be assigned to you before long I ask you to make immediately all the preparations to accommodate and employ properly the manpower assigned to you. It cannot happen that for some reasons a delay would occur in the employment of the manpower assigned to you, be it because of skilled labor assigned not in accordance with your wishes or of lack of accommodation."

Closing Brief Ambros

I.G.Auschwitz arranged preparations for this manpower and requested at the same time: " We therefore ask you grant permission for the erection of a residential camp for the accommodation of approximately 2300 men (O.A.III A/324,Exh.92).

In the prearrangement of labor employment as requested by Gebechem on 11 August 1941 for 1942 Auschwitz informs, *that we expect to have a maximum strength of 9000 men at the construction site of Auschwitz in 1942. 1000 of these men will be concentration camp inmates. In addition to these, mechanics: 2000 men! (OA Doc.411, vol.IV A)

Thus less than 10% were expected now in the hope that enough free workers will be available as it was requested at the same time by plant from the Labor Office Bielsko and Gebechem.(OA Exh. 413, 414 and 415 vol.IV A)

But there were not enough free workers available which would be sufficient to keep the deadline.(O.A.Doc.413, OA Exh.114). Should AMBROS, the technical chief, be made responsible for this?

The OA Exh.110,Doc.424 Vol.IV A shows on 4 graphic charts the composition of manpower during the 4 years of construction. On the average there were 20% internees, out of which about 1/3 were employed by the I.G.

In an circular dated 3 March 1941 (Pros.Exh.2201 NI 11 787) the plant refers to this urgency priority in order to show the plant's need: " This plant is among the most urgent construction projects and is supposed to be finished with special speed by using all available means. All state and SS-agencies have received.....directives to support the construction project by any conceivable means.

Wehrmacht commission number	4021 - 1801
Control No.	W ROX 1801
Machine iron quote	"Special priority SS"
Construction	Urgency priority 0.

The meeting in Katowice on 7 April 1941 was opened by the representative of the Reich Office who said:

"The construction project has been classified as to construction as urgency priority 0 (i.e. highest priority) as to appliances as urgency priority SS, which denotes sufficiently the highest urgency priority." (Exh. 1430, NI 11117 and OA-Doc. 402 Exh. 101, Vol. IV)

The same priority was given to the so-called Leuna part and the pressure as to time was kept up during the whole time of construction.

1.) The number of internees employed at a certain time is a result of the fact that the Reich agencies were unable to supply a sufficient number of free workers through channels of the usual requisition of manpower; they did not, however, change their imposed commissions and deadlines during the war emergency.

Simultaneously with the Himmler decree (Exh. 1422, NI 11086, vol. 72, p. 71) the labor allocation office of the Gebechem informed that "we would be able to allocate 2000 or more workers to the Buna project from the end of March onwards".

(Ex 1487 III A)

If Gebechem could have kept its promise dated 8 March 1941 by supplying 2000 or more men the internee problem would not have become critical at all at least in 1941 and possibly not in 1942 either.

CERTIFICATE OF TRANSLATION

14 June 1948

I, Stanislaw S. FELDMAN, ETO 1043, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Stanislaw S. FELDMAN
ETO 1043.

2.) The situation was aggravated by losses in production brought about by war.

Destructions, caused by continued air raids, in Germany, made it necessary, again and again to change production localities, to reconstruct etc. and, on account of this, to effect at the same time changes in the composition of the plant personnel.

a) Thus, for instance, 1300 workers had to be withdrawn from Auschwitz to Bruex at the beginning of June 1942 through the Reich Economy Office (Exh. 1443 MI-11135, vol. 73, p. 99) because the "gasoline supply" was seriously endangered through severe air raids on hydrogenation plants, and because workers had to be withdrawn from the Auschwitz buna plant which had not yet started operations in order to push the start of operations for the plant at Bruex, especially since the buna plants in Germany had not yet been hit. In view of the general and acute labor shortage in Germany, this, of course, only meant that one hole was opened up in order to close another. At any rate construction work at the Auschwitz site almost ceased on account of this, and for this reason the plant management of Auschwitz asked the Gebochem on 28 June 1942, "in view of the exclaimed shortage of skilled workers, to rereturn these workers who had been turned over to Bruex."

On account of this situation, MEROS wrote the letter of 10 June 1942 (Exh. 1443, MI-11135, vol. 73, p. ⁹⁹~~100~~) to KRAUCH and tells of the measures introduced in order "to attain the aim of having production started at the centers of gravity by the end of 1943 -- an impossibility, unless replacements were soon provided for the workers withdrawn."

The withdrawal of French workers did not emanate from KRAUCH himself, but from the Reich Minister for Armament and War Production. For this reason, Krauch asked MEROS for a drastic letter wherein the effects of the order of the Reich Minister for Armament and War Production were described to him.

Upon this, AMEROS wrote to KRAUCH the letter of 10 June 1942,
introduced by the prosecution as Exh. NI-11135, vol. 73, p. 99.

AMEROS therein describes matters as they were thought expedient after the previous talk with KRAUCH. In view of the fact that the construction of Auschwitz had been ordered from above, Otto AMEROS wanted to avoid the impression that there was any dallying with the execution; he even remarked that the order was correctly carried out. He did this by reporting to KRAUCH, from his higher position as member of the Vorstand: "In the last few years, I have hardly known a construction site where the work was started with such alacrity and carried out without obstruction."

As things were, however, this unmistakably only referred to the large-scale and clear-cut directives of the construction management, the utilization of the railroad network, the many steam shovels, the construction of social welfare installations and such matters of "larger points of view".

b) The air raid on Huala at the end of June 1943 created a similar situation. AMEROS participated in the 43rd conference of the Central Planning Office ^{Exh. 1507} (NI-5666) of 2 July 1943, as he was, by chance, visiting KRAUCH in Berlin. There he gives "a descriptive account of the extent of damages at Huala and the possibilities of re-construction."

On the basis of a teletype from Goering, dated 26 June, to the officially invited participants in this conference (which did not include AMEROS), the "development of bomb production" was also discussed under point II of the conference's program. The leading and competent officials of the highest offices (Reich Ministry for Armament and Munitions, Reich Ministry of Economy, Reich Air Ministry, Plenipotentiary-General for Labor Allocation, Plenipotentiary-General for Chemistry) were heard in this connection.

Exh. 1507 Vol 77 p 57.

How little MEEROS knew of the subjects discussed at the conference, is proven by the circumstance that, in connection with point II, "planning" was requested for a new buna plant..... to be located, if possible, in the Government-General, a plan which neither MEER nor MEEROS had ever considered. According to this conference, however, it was even to be "made ready for the desk drawer" ! The I.G. never started to work out this project.

The result of the conference was that as far as Auschwitz was concerned, "further withdrawals of workers from Auschwitz were stopped," (number 1), and, under number 4, "additional prisoners were turned over from the concentration camp Auschwitz". The details are to be looked after by WITTE, NICOLAI, and TILL. KOERNER (Under-Secretary in the Four Year Plan) was "to approach HITLER immediately" on the employment of prisoners.

Thus everywhere the highest Reich Offices were taking a hand in the matter so as to handle the loss of production which was threatened through Huels.

It is typical that, in the matter of the "increase of the development at Auschwitz from 20 000 tons to 30 000 tons" which was also requested by the Reich Offices represented, "the development of equipment was to be secured through contributions (Schieber/Eckell)". Schieber was head of the Armament Supply Office in "Ruhr" and Eckell was "Referent" for buna in the Office of the GbChem and the Reich Ministry of Economy.

3.) Private industry alone could not master this crisis.

Not even the official authorities were able to master the crisis in the procurement of the required labor, on the contrary, under the pressure of requirements for total warfare, they could no longer keep the middle road between over-planning and decreased possibilities.

For instance, they actually compelled the plant to build additional installations (O.I. Exh. 221, MI-11940), although the labor situation was so difficult as to be almost hopeless - while, on the other hand, the plant management and AMBROS endeavored, in view of the mounting difficulties in the supply of material and the procurement of labor, to turn the whole construction site at Luschwitz over to the Organization Todt. This happened already in the first year of construction, at the end of 1941. This organization had enough higher personnel at its disposal, and had, as an own organization of the Minister, far greater possibilities in all questions of construction.

The idea was to have the OT erect the buildings, and that the I.G. with its chemists would only appear on the scene after these works of construction and assembly had been completed.

But Luschwitz had to wait, although "I (Duerrfeld) find this delay most disturbing" (O.I. 415)

Months are passing - on 21 February 1942 AMBROS transfers as a partial solution the construction volume of 25 million Marks. Another half year passes until this transfer is perfect at last. (O.I. Exh. 100, Doc. 421, Exh. 99, Doc. 420 vol. IV)

Camp IV must also be mentioned in this connection. That was at the time when it was being equipped for the accommodation of prisoners.

4.) Even occasional visits of high officials could not make any changes in the situation.

Nobody could arrange a supply of free and efficient skilled workers as urgently requested by every plant.

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On the contrary, when HIGLER, for instance, had a high official explain to him, from a high tower the installation of the plant on 18 July 1942, and, when asking him about the anticipated date for the start of operations, being told "May to August 1943", he put the significant question: "Why this date could not be shortened by means of increased employment." The plant management then pointed out, of course, the difficulties "concerning the procurement of labor and materials", and that the Army Ordnance Office "probably also on account of the difficulties in regard to material, could not make up their mind yet" about starting a Bonten plant. (SI - 14551, Exh. 1991), (JEROS was not present at these occasions) - or the visit of such persons, however, was made for entirely different purposes than those of arranging for a supply of labor. This was so when FOHI called at Auschwitz on 23 November 1942.* He wanted to settle differences between the concentration camp management on one side, and the town, the I.G., and the German Reichsbahn on the other side concerning sewerage questions and a change of location for the concentration camp on account of the extension^{of} the railroad station.

PE 2130 NJ 14489

It was only natural that the precarious labor situation, the main problem at that time of any newly - established industry, did not remain hidden to such a visitor.

5. Not a single proof can be found that AMBROS had intended himself to increase the utilization of prisoners. The employment of prisoners always was the last resort of the plants.

"The I.G. as a whole and the entire plant management and all leading officials at Auschwitz, were horrified from the start, and in a general way, by the utilization of the labor of prisoners, and it was quite obvious that we endeavored as far as possible to get civilian labor."

(Interrogation FAUST, transcr. p. 14311, English page 14003).

When asked: "Have you requested the prisoners only within the frame of the orders received by you?", the witness FAUST answered:

"Of course." (Transcr. Germ. p. 143111, English page 14004)

"The request for labor" was made by the labor allocation director, whose position, as "head of the welfare dept." was quite independent (transcr. Germ. p. 14321/2, English 14016)

In practice, AMBROS had really nothing to do with labor allocation.
Transcr., Germ. p. 14321, English 14016.)

CLOSING BRIEF AMBROS

CERTIFICATE OF TRANSLATION

14 June 1948

I, Leon Ratzersdorfer, ETO 483, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of document CLOSING BRIEF AMBROS.

Leon Ratzersdorfer

ETO 483.

IV. The knowledge of AMEROS about Auschwitz and his responsibility in Auschwitz.

AMEROS, who visited Auschwitz only four to five times a year for short stays (transcript page ~~8805~~⁷⁸²⁵ German, ~~8805~~⁷⁸²⁵ English), was not in a position to concern himself with the details of such a construction job. In his capacity of the Vorstand member responsible for organic chemistry, he had to cope with chemical and technical tasks which were so comprehensive, manifold and exacting that they were nearly beyond the working ability of an individual. "His task as a member of the Vorstand" was "only to give to the executive officials, engineers and specialists working under him the overall directives according to which the construction projects were to be carried out" - thus the witness FAUST, who was a construction chief and later chief of the construction department in Auschwitz. (transcript page 14320 German, 14015 English).

AMEROS never was plant manager of Auschwitz, and he could not be the plant manager. His residence was in Ludwigshafen and the scope of his activities comprehended many plants scattered throughout Germany. (see transcript page ~~7904~~⁷⁸³¹ *encl* German). He did not have the knowledge of details nor the local knowledge necessary in order to manage a plant with many thousands of employees.

1.) AMEROS did not have any detailed knowledge of the conditions in the Auschwitz plant (transcript p. 11792 German, 11599 English).

a) In the construction meetings described by DIERKHELD as the "steering mechanism" in the hands of the Vorstand - this really is what they were in the technical field, but not in the field of internal plant administration - all matters were only reported and discussed in the meaning of broad directives and few details were referred to. (Faust, transcript p. 14313 German, 14009 English).

Even a thorough screening of the records of the construction meetings does not reveal any indications to the effect that AMEROS

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took any active part in criminal offenses. Wherever he intervened, he was helpful, and wherever the records are silent, there remains the question what AMEROS actually did and what he was able to do.

- b) The weekly reports were kept as a kind of "weekly diary", not only for historical reasons but also for purely technical reasons. The weekly reports in Farben were made so that all construction offices working there might be regularly informed of the progress of the work." (transcript p. 14317 German, 14012 English).

When FAUST, the author of these weekly reports, was asked whether AMEROS, i.e. read them, he answered frankly: "I consider it impossible that AMEROS read these weekly reports. I frankly never expected him to because I knew very well how much work AMEROS had to do." (transcript p. 14314 German, 14010 English).

This deposition seems perfectly credible, if one looks only at one specimen of these original reports. By far the major part of this voluminous document consists of reports on technical details, and it amounts to a completely distorted picture of the significance and the obviousness of this report, if the Prosecution submits in their supplementary document books only individual sections of these reports, by way of excerpts containing only those items which the Prosecution considers an indication of some criminal offense or other. It was only in Nuremberg that AMEROS was in a position to study these reports thoroughly; during the war he would not have had the time to do so. "It is really not possible to expect that a chemist reads every construction report I got about 50 letters a day. I was away from my office 120 days a year because at that time I was in charge of 12 plants....." (transcript p. 7941 German, 7807 English). Apart from this, only one copy of each report was earmarked for him and for Dr. EISENLD, the executive in charge, and it was a matter of routine in the I.G. to pass it on immediately to the latter, in order to elicit, when necessary, an oral report on the progress of

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the technical developments. (For the distribution see NI 15152, PE 2205 book 93, page 17). No indications exist with regard to the question which of the scattered parts and fragments of the weekly reports quoted by the Prosecution came to the notice of AMEROS.

c) His personal impressions during his stay in the plant.

The employment of prisoners struck Otto AMEROS as orderly. With regard to rations, he knew the figure of 2,500 calories. With regard to housing, he knew that approximately 5 millions of Reichsmark had ^{been} spent for about 6,000 prisoners, which is practically almost the same figure as in the case of German workers. At the occasion of his only visit in camp IV Monowitz, he ascertained together with ter Meer and other executives that the huts in camp IV were erected on solid foundations, that a steam heating system existed, that the beds were provided with blankets, and that the infirmary blocks were equipped with instruments and remedies.

All this was testified by the constructing architect DOEMMING in the stand. (transcript p. 14218 German, 13925 English).

But it was not only AMEROS who carried out the inspections. The technical commission on the highest level - the Toko - visited Auschwitz several times. (JAHRES, Dr. SAUER and Dr. SYMBEN). The senior engineers visited Auschwitz. Herr SAITO, the senior construction engineer, frequently went to Auschwitz. All of them reported to AMEROS on their impressions. As far as social problems were concerned, the main plant manager Dr. SCHNEIDER and his collaborator BERTHAMS dealt with these matters in the plant. Together with Dr. DUERRFELD, they made the appointments for most social welfare jobs. Thus, apart from DUERRFELD, also ROSSBACH, NIEPMANN, SAUERTEIG, SCHUSTER and others came from Lema. It is certainly understandable

that AMEROS, who was burdened with so many other tasks, left such decisions to these competent quarters.

- d) The just consideration of the state of necessity created by the war in the evaluation of conditions in Auschwitz.

In February 1941, the Reich requested the construction of a large plant, promising every kind of assistance, but as early as in March, shortcomings in the allocation of wood for the huts made themselves felt ("Barackenkrieg", the war of the huts, exh. 1992 XI-14553).

In an authentic contemporary document dated 15 October 1941, (O.A. Exh. 108, doc. 41, book IV) it is stated how difficult the position then was: "At present, even German workers cannot be provided with bedsheets". Office work "must be done by semi-analphabets".

Another report dated 12 January 1942 (O.A. doc. 410, exh. 112, book IV A) reveals the endeavors of the plant to obtain permits for the purchase of blankets, towels etc. Bedlinen is not available at all, "as the Wehrmacht has seized the whole stock in order to manufacture snow shirts,"

"that hotels will have to give up part of their stocks of bedlinen and that in the near future a decree will be promulgated according to which all workers directed and assigned to the building site will have to bring their own bedlinen with them."

For crockery, "the Reich office for goods of various types" referred the matter to the "Trade Group ceramic industry", for cutlery to the "trade group for goods of various types", etc.

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These bottlenecks and these difficulties made by government agencies and trade groups applied to every item required ^{at} the building site, though Auschwitz had been given top priority. If in spite of this the living quarters, eating rooms and kitchens were equipped as well as they were, the credit is due to the construction management which fought this battle with the authorities right to the end.

"The longer the war lasted, the more difficult was it to provide the material and to adapt the installations to the requirements of the authorities. In spite of this, it was the I.G. in particular which succeeded in obtaining the necessities, I might even say many additional items, and in installing them at Auschwitz." (Vajo transcript p. 11768 German, 11526 English).

3.) From other sources, too, AMEROS, was not in a position to obtain any knowledge of the atrocities committed in the main camp of the Auschwitz concentration camp.

In this connection, the Prosecution has preferred ^{some} ~~certain~~ assertions which seem important to the Prosecution because they might justify conclusions to the effect that the alleged knowledge should have caused AMEROS to form certain suspicions with regard to Monowitz as well, but these assertions lack any proof whatsoever. The Prosecution tries to base their imputation - which is a mere hypothesis - on nothing but assumptions voiced by persons who either had no personal contact with AMEROS at all, or only very slight contact.

a) It may be understandable that prisoners knew of the conditions in the concentration camp, although even amongst these there were persons who had no such knowledge at all up to the last months. (This is a phenomenon which has already been discussed, and commented on, in the literature concerning the concentration camps.) At any rate, none of these prisoners had any opportunity to talk to AMEROS. If even the local people were not given any opportunity

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to have conversations with prisoners - all the more as this was strictly forbidden by the much feared SS camp management - such opportunity did exist even much less for AMEROS, who was overwhelmed with technical and chemical tasks on his rare visits.

b) For these reasons, the deposition of the prisoner PFEFFER calls for a larger measure of attention that it would otherwise deserve normally or justifiably. For amongst the large number of prisoners who have made statements in or for Nuremberg, PFEFFER is the only one who knew AMEROS at all, if only through a short conversation in the laboratory. And it is significant for AMEROS' mentality and for his care for Auschwitz that when visiting the laboratories on a quiet Sunday afternoon and asking chemical questions, he approached, as a chemist, PFEFFER, a student of chemistry, and that he immediately found a human contact with him, beyond all those objections and the resentment which he would necessarily have felt towards a prisoner and a Jew, if one would believe the evaluation of AMEROS' character such as the Prosecution tries to describe it.

However, when AMEROS noticed that PFEFFER carried out his job with scientific understanding, he advised him to use ^{the} results for a doctor thesis in France. This happened 5 weeks before Auschwitz was evacuated, at a time when the Russians were preparing for their last offensive in the Vistula bend. In his description of this conversation, PFEFFER, while stressing the humane attitude of AMEROS, has laid a certain shade to the conversation which cannot be true, according to the depositions of his superior, Dr. SPARNIG, the relationship of whom with PFEFFER was based on mutual confidence, and of the foreman Montpollier, who was present. (O.A. doc. 425, exh. 201 book IV 2).

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There exists one characteristic document which confirms this, or rather the positive impression which AMEROS was caused to form about the situation of PFEFFER in SPAENIG's laboratory is confirmed by the photostat of a letter which SPAENIG conveyed to Frau PFEFFER. (O.A. exh. 210Q, O.A. doc. 427). Therein, it is said:

"I have been all right during the whole period I spent here. I have not suffered from hunger and worked the whole time in my own line. I have been treated very well by my chiefs. My chief (Dr. SPAENIG) has treated me really well and considered me not a prisoner but a human being."

This letter is a spontaneous testimony concerning the treatment of a prisoner in the I.G. plant. AMEROS became acquainted with this prisoner and with his fate. Was he then not justified in feeling reassured?

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c) Struss (transcript p. 13770 German, ~~4498~~ English)

"cannot state the 'day' nor the 'year' when he discussed with AMEROS his knowledge of atrocities committed in the Auschwitz concentration camp; today he does not even believe that he did tell AMEROS about them, for the simple reason that he could not get hold of him".

But even if STRUSS had informed AMEROS of these rumors, STRUSS of all people was not a person the words of whom AMEROS would have believed, and this must be kept in mind in favor of AMEROS; this becomes evident if one evaluates the character of the witness STRUSS and in particular his relationship with his superior, ~~ter MEIER, who describes him as a~~

d) On the other hand, the evaluation of the evidence cannot disregard the witness Dr. MUENCH. The Prosecution tries to establish a connection between the incidents in the concentration camps Auschwitz and Birkenau and the system of labor employment in the I.G. In this connection, they impute a line that all members of the Auschwitz plant knew

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of the atrocities committed in the concentration camp.

In order to refute this assumption, it was necessary to produce a witness who stayed in the Auschwitz concentration camp itself and who was able to enlighten us by a sober description of these dreadful incidents. This witness was found: it is Dr. H.W. MUESECH, who witnessed all these events in his capacity of a physician in the hygienic institute of the concentration camp.

Even before he came to Auschwitz, he heard of extermination camps through reports in the Swiss radio, "but I did not believe what I then considered propaganda reports". (transcript p. 14663 German, 14324 English).

When Dr. MUESECH was working in the camp and knew of these matters, he remained silent about them. The threats against breaches of secrecy were "so clearly worded for members of the SS that everybody avoided telling even the closest friend about it" (transcript p. 14667 German, 14328 English).

To the mass of the guards this applied even to a higher degree (transcript p. 14667 German, 14329 English).

"I have the very definite impression that the inmates, too, did not say anything to civilians with whom they got in touch in Auschwitz." (transcript p. 14667 German, 14329 English).

"They were exposed to the same pressure as the SS..... especially the German speaking Poles everyone of these people working for the railroad" (transcript p. 14673 German, 14336 English).

Thus it becomes understandable that, although rumors reached individuals, nobody was, in my opinion, able to obtain confirmation (transcript p. 14674 German, 14336 English).

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In the opinion of the Prosecution, the Auschwitz concentration camp is the background of the stage on which the work done in the I.G. plant took place.

Whereas I.G. considered the labor camp IV Monowitz a means to keep aloof from the concentration camp, the Prosecution, on the other hand, considers it part of the concentration camp and describes conditions in a way as if I.G. and SS co-operated hand in glove, as it were. Actually, the plant endeavored to employ each inmate according to his ability for a certain type of job, thus giving him the standing of an employee of the firm, with the result that - in spite of his being a prisoner - he considered work in the plant a relief. This was the conception of AMEROS and of the executives on the construction site.

It must be emphasized again and again that the plant managers could not obtain any insight knowledge of what happened within camp IV. They did not know of terms such as fluctuation and selection, and of their meaning.

True, they noticed sometimes that certain groups of inmates did not report for work any longer. When they complained, they were told that certain prisoners such as Poles or Russians etc. had to be transferred to another camp according to new directives. The employment office had to abide with this, eventually, and to start training another group of inmates.

It was impossible to grasp the meaning of the selection of feeble persons and persons unfit for work.

The employment office may have expressed the understandable desire that only inmates fit for work on a construction site be assigned to such work, whereas others should be given tasks concerned with the internal routine of the camp or re-transferred to

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the main camp, - but it is unthinkable that any member of the I.G. was able to grasp the idea that these unfortunate people were murdered (deposition MUEENCH). *TR. engl. 14 370*

Not a single piece of evidence vindicating this charge has been produced.

No document contains any indication to that effect. There is no confirmation of any suspicion nor even of any rumor to the effect that inmates of Monowitz camp were affected by this deadly madness. AMEROS had the notion that practically all inmates, once transferred to Monowitz, remained there, with the exceptions of transfers effected for reasons of organization. The new arrivals were used in order to reach the number of 7,000 - 8,000 men by degrees, and to replace the prisoners mentioned above who were transferred to camps within Germany.

Dr. MUEENCH "personally knew construction engineer FAUST very well" and emphasizes: "I know with absolute certainty that Herr FAUST *he had no knowledge about the selection and* know no more than those rumors and that he did not know anything about the fact that sick people were being gassed there."

14341
(transcript p. 14676 German, ~~14390~~ English).

"It was an unwritten law in Auschwitz that one didn't discuss that, particularly with civilians, a law which was observed by both parties." *14341*
(transcript p. 14677 German, ~~14391~~ English).

"I can even today still determine, when I get in touch with people whom I know previously or with strangers, that 90% of the German people are today still firmly convinced that the facts of Auschwitz were not true, that people don't believe it despite all enlightenment that has been produced." *14343*
(transcript p. 14678 German, ~~14392~~ English).

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CERTIFICATE OF TRANSLATION

15 June 1948

I, Ernst SCHAEFER, Civ.No. ETO 20 165, hereby certify that I am a duly appointed translator for the German and English languages and that the above is a true and correct translation of the original document.

Ernst SCHAEFER
Civ.No. ETO 20 165.

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Ambros too once observed this smell and asked whence it came. The explanation that corpses originating from the spotted fever epidemics were burned, was obvious. (Pros. Lxh. 1419, NI 9542, p. 47).

Thus, Ambros was given a hint, in this case too, how glad the prisoners must have been to be in Monowitz and not in the large concentration camp.

On the construction site and among the prisoners only one spotted fever case happened, according to a report of the plant physician, but this case could be isolated. At that time, this fact was lauded as a great success of plant hygiene, because such cases were far more rare at the plant as at any time, in peace or in war, among the civilian population of this region. This is proved by the health statistics of the Polish administration. (Duerrfeld Doc.150).

Among the radio reports concerning atrocities, the attitude of the German radio commentator Fritzsche is of interest, who says:

"According to my knowledge I am convinced that there existed an actual organization which blocked those news from the concentration camps and hindered their spreading among the public."

"Such cases happened towards the end of the war, but then on a huge scale".

"I have often pointed out, even in the German radio, by emphasizing such atrocitytales of "chopped - off children's hands" the incredibility of atrocity reports in world war 2".

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- *) The inspection of Auschwitz concentration camp only increased Ambros' good faith.

On 7 April 1941 Ambros saw for the first time a concentration camp on the occasion of a trip to Auschwitz. One did not like to speak about such camps. "This camp made not such a terrible impression on me as I had expected". (Proc. Exh. 1419 NI9542).

This impression was also confirmed by Herr ter Meer, in whose company Ambros came to the concentration camp a few months later (fall 1941). The third and last time Ambros participated in a conducted tour which visited the same block each time, in November 1941. At that time no connection with atrocities could be observed, as it appears that in 1941 no people were killed, as yet, in Auschwitz.

The witness Dr. H.W. Muench, who was a physician working at the Hygiene Institute in Auschwitz concentration camp, explained the comparatively good impression as follows:

"The camp leadership arranged it masterfully to conduct these guided tours in such a way that the people being guided around did not see anything about inhuman treatment. The main camp was shown only... (German transcript p.14668, English transcript p. ~~14334~~) "14329)"

On this occasion Ambros saw habitual criminals (Proc. Exh. 1419, NI 9542, p.47).

Gaulleiter Faust, who had the clearest insight in the first period, says: "According to my impression, these people were mostly criminals, to a ~~few~~ lesser degree they were political prisoners" (German transcript p. 14269, English transcript p. ~~14367~~) 13968)

The witness Fritz Schermuly states that e.g. "in April 1943 about 2.000 to 2.5000 inmates were transferred from Gusen I to Monowitz". "They were, all of them, prisoners with a green chevron (criminals), with previous convictions", Besides there were, of course, also political prisoners.

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The prisoners, bereft of liberty anyhow, could find the work possibilities at the new constructions as a boon in the Christian meaning.

Under the impression, and imbued with the erroneous interpretation of conditions in Auschwitz concentration camp, Ambros wrote to ter Meer and Struss, heads of the Sparte and his helpers and advisors, the letter of 12 April 1941 (Exh. 1431, NI ~~109377~~: 11118) TR. encl. 7848.

3.) Ambros' co-operation in the creation of human conditions in the plant by granting large-scale credits.

In order to establish tolerable conditions, in the Auschwitz area, which had been neglected in hygienic and cultural aspect, a social welfare program was urgently needed, for which the I.G. spent large amounts of money. Even if these emergency matters could not have prompt results, the cause was that in this period of severe "war-time distress", it was possible only with the greatest efforts to obtain the materials at all.

Credits for the social projects.

When the decision had been made regarding the location Auschwitz-Dwory, the first step was that socially and culturally everything had to be created new. "Auschwitz was incredibly dirty.....as if time had stood still since 200 years,something like under Peter the Great..... (letter Faust to Santo)*. Already in the first days of March, in contrast with the usual working methods on normal construction sites, the construction of lodgings and barracks had to begin immediately.

*PE 2261 NJ 15258-

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The first credit comes: "it is intended to create a barrack camp for the accommodation of foreign labor, in the first place for 2 000 laborers." This credit was approved in advance by Ambros on 8 March (O.A. Dec. 406, Exh. 105). By the way, this is further proof that at the beginning of March 1941 one did not yet reckon with the utilization of prisoners.

One month later the first accommodations' program with about 3 000 lodgings followed (O.A. Dec. 405 - 407, Exh. 104-106).

This policy of investment resulted in a city composed of lodgings and barracks for 30 000 people costing 35 million marks.

For the accommodation of the inmates the nearly completed camp IV which was designated for German workers was placed at disposal. The required expense amounted to about 5 million marks for approximately 6 000 inmates; a further expenses were necessary in 1944, when the number of inmates exceeded 6 000. This specific sum of 800 mark pro inmate demonstrates that the expense was nearly the same as the expense for German, respectively foreign, free workers. In any case "the barracks of the camp were very well equipped" (German transcript p. 11637, English transcript p. 11908/9)

V. The spheres of responsibility in Auschwitz.

In order to clarify the responsibility on the construction site, the chief of construction, Chief-Engineer Faust, described in his affidavit Duerrfeld, Exh. 19, the sphere of activity of the officials who were active on the construction site. Their tasks were divided in the following manner:

1.) Construction and Assembly management of the I.G. :

- a) Safe-guarding of the interests of the constructing party regarding a third party, in particular regarding authorities and construction and assembly firms, where orders had been placed,
- b) The construction and administration - organization of the entire construction site.
- c) Examination of the construction prices, conclusion of construction agreements, construction accounts,
- d) Planning.

2.) Armament construction management of the RuK

"As it was not possible to recruit the required personnel for the I.G., an agreement " regarding the organization of a construction management was reached with the office for Armament Construction (RUEBAU). Certain construction projects were passed on to it, in particular those outside of the camp limits.

The Ruebau also exercised simultaneously the functions of the Gebe-Bau as supervising organ on the construction site. Its tasks were similar to the tasks of the construction and assembly management of the I.G.

3.) The largest group consisted of approximately 250 foreign construction and assembly firms.

Their responsibility consisted in the carrying-out of their orders. Their supervising personnel was therefore alone charged with the responsibility for issued instructions for work and for the allocation of the labor force. The great majority of inmates was assigned to work with them.

4.) The SS was the fourth party carrying the responsibility. For all other matters concerning the labor allocation of inmates the SS was competent and responsible.

A draft by FAUST shows graphically (DÜRRFELD Exh.21) the limits of the spheres of responsibility regarding the inmates in camp IV and the plant. With regard to camp IV the I.G. after it respectively

Ruebau had constructed the camp and, according to the SS regulations, paid for the beds lockers etc., had only to deliver power (electricity, steam and light) and the food. This was done with regard to power to full extent, with regard to food in accordance with the government regulations for the highest rations with additional sums added by the I.G.

In the plant the I.G. had to give instructions for work to a quarter of the inmates and for the other three quarters it acted only as a formal mediator. Apart from this the I.G. issued voluntarily the Buna soup and bonuses.

Dr. Rossbach was in charge of co-ordinating the whole social organisation.

"The head of the labor allocation was in the main Dr. Rossbach being the head of the social department. Under him was Assessor Schneider (engl. Transcr. p. 14016) Dr. Rossbach, like all other chiefs of main departments was completely independent in his work. He received, however, also in this the required directives by the plant management. The carrying-out of these of these directives was Rossbach's responsibility.

Dr. Ambros, as a member of the Vorstand, was intrusted only with the task of issuing to the leading officials under him, engineers and technicians etc. the directives, on a broad basis, according to which the building..... projects were to be carried out.

He (Ambros) had practically really nothing to do with labor allocation (german transcr. p. 14321 engl. transcr. p. 14016.)"

It was, as a matter of fact, impossible for him or his colleague BUSTEFISCH to intervene in these matters, as this channel was officially designated, as has been stated repeatedly.

Auschwitz remained indeed a construction site until the handing over. The Buna production was not started at all. This was the reason why in Auschwitz the construction and technical engineers had to be charged with the management

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This development is demonstrated by FAUST's and subsequently, DUFFREID's appointment as director of the plant. At the start of production, which was expected for spring 1945, a chemist was to be charged with the direction as manager of the plant, in accordance with the shifting of responsibility.

- 5) AMPROF did not have to worry about conditions on the construction site also for the reason that all work there was placed under official supervision.

In view of the urgency and importance of this construction project, all offices were instructed to exercise a continuous control. A diagram concerning the activity of the authorities was introduced during direct examination.* It could be rendered still more elaborate through further testimony of witnesses. More than 100 government offices visited the plant in periodic intervals and examined all work done there.

The OPChem was in charge of the construction site, on the other hand the construction management kept informed the branch offices of the OPChem, BOHEM in Kattowitz and FT/TK in Breslau. With the appointment of commissioners, an exchange of experiences took place periodically in short intervals at the Gebchem in Berlin. The Gebchem had his own representative on the construction site and managed, apart from this, a part of the construction matters on his own. The "Gebchem" was represented on the construction site by a labor office, not taking into account the labor office Pielitz, regional labor office Kattowitz and others.

I do not have to discuss in detail the great number of party offices which, simultaneously with the government organization, exercised a special supervision in their own manner.

Upon instruction by higher offices, the Regierungspräsident, and under him, the Landrat, showed great concern about all matters of the construction site, as results from documents.

* OA 425. OA Exk-109

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It followed the appointment of Director Thiel who was charged with all matters concerning the Auschwitz plant. Thiel is now responsible to the Reichspräsident regarding to elimination of all difficulties. (Doc.O.A.418).

Vajda described in his examination the special control through a period of 14 days exercised by the industrial supervision. All matters concerning the worker were supervised by him. The government health office completed this supervision.

Thus the sphere of activity of appr. 100 offices could be stated. So, as a conclusion, the question seems justified: what causes the prosecution now to charge the plant management with the responsibility?

These men, construction and mechanical engineers, later chemists and business men shall account for all difficulties in war time emergencies on this construction site, while their actual responsibility lies in their special field and is indeed already heavy enough. May we ask, finally, which responsibility has a member of the Vorstand and who

- 1.) receives instructions to plan and to construct the plant
- 2.) receives instructions to assign inmates to work,
- 3.) who is instructed to carry out all this in spite of all difficulties, with the greatest urgency.

6. Ambros' actual responsibility, which he does not shirk, is:

- a) Ambros was responsible for the suggestion of the location Auschwitz, with the restriction that the instruction of 8 November 1940 (Exh. 1408) mentioned Sillesia.

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- b) Ambros was, jointly with his colleague Buetefisch, fully responsible for the chemical and technical methods used, not only regarding technical and financial matters, but also regarding problems of plant security.
- c) Ambros and Buetefisch shared the responsibility for the careful selection of the local delegates, together with the chiefs of the sparte ter Meer and Schneider.
- d) As far as he was informed through the conferences concerning construction matters, Ambros shares the responsibility for the general carrying-out of the construction project, in its large outline.

It belongs however to the sphere of activity of a construction resp. assembly chief to handle the problem of a construction site in a responsible manner on the spot; the "basic instructions were received by the conferences on construction matters, therefore through Otto Ambros or Heinrich Buetefisch." (Lxh. 1423, NI-4184).

CLOSING BRIEF AMBROS

CERTIFICATE OF TRANSLATION

15 June 1948

I, Helene Lallemand, Civ. No. AGO 1 398038, hereby certify
that I am a duly appointed translator for the German and
English languages and that the above is a true and correct
translation of the original document.

Helene Lallemand
AGO B398038

SWEEP + PRESELECTION EXHIBITS USED AT
TERRY BRIER, ARIZONA (EVIDENCE)

Case 6
Defense

12

Index and Prosecution-Exhibits mentioned
in Brief for Otto Ambros

Amg



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TRIM BRIER BURNING (ENGLISH)

Case 6
Defense

Military Tribunal No. VI

- Case 6 -

Trial Brief

for

the Defendant Dr. Ernst BUERGIN

in the proceedings

United States of America

versus

KRAUCH and others.

Dr. Werner SCHUBERT
Defense Counsel for
the Defendant BUERGIN



Long

CLOSING BRIEF BUECHIN

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Nuremberg, July 6, 1948

to: Military Tribunal VI

subject: Closing Brief German

I herewith submit a list of corrections to be made in the above mentioned closing brief.

Index p.II

No. 2: "forced laborers" should be "conscripted workers"

No.10: "women and children workers" should be "employment of women and children."

p.2, 1.22

"assignment" should be "order"

p.4, 1.10

Insert "Hitter" after "affidavit"

p.6, 1.14

"foundry" should be "production"

p.9, 1.4

"beam" should be "beam"

p.9, 1.18

"1933" should be "1930"

p.10, 1.9

"book II" should be "book III"

p.11, 1.20

Insert "as a whole" after "submitted"

p.13, 1.8

Insert "concerning the putting into operation at an earlier period" after "Trans"

p.13, 1.9

"1930" should be "1934"

p.13, 1.13

Insert "and the reference to prosecution exhibits 582-584, document book 30, are" after plants

p.14, 1.24

8554
Insert "(transcript p.8554)" at end of line

p.16, 1.6

Insert "technical" after "specific"

p.16, 1.20

Insert "(transcript p.1720)" after "cross-examination"

- p.19, 1.4
"This" should be "He"
- p.19, 1.5
Insert "(Exh.709, Book 37)" after "Prosecution"
- p.23
Insert headline "A" after line 15
- p.24, 1.14
the line should read "145 sq., 175 sq. (statement Hmann, transcript page 2956)"
- p.25, 1.18
"vol.53" should be "vol.33"
- p.26, 1.2
"John" should be "Zehr"
- p.30, 1.23
"Prosecution" should be "transcript"
- p.31
Insert headline "B" at beginning of page
- p.34, 1.10
Insert "There is no proof that this ever happened" after "factories."
- p.35, 1.7
change line to read "Probably in order to establish that Durgin -
contrary"
- p.37, 1.2
"page 13493" should be "page 13490"
- p.43, 1.13
change line to read "page 90) confirm that Harry Bakken from the Aleca
paid several visits"
- p.43, 1.27
delete "Doc.Book 24"
- p.45, 1.17
Insert "completely" after "supplied"
- p.45, 1.23
"i.e. factories" should be "which there were"
- p.46, 1.19
"to conquer" should be "in its endeavors to enter"
- p.47, 1.18
"Exh.943" should be "Exh.924"
- p.50, 1.11
"Exh.1976" should be "Exh.1967"
- p.51, 1.18
"Exh.1220" should be "Exh.1220"
- p.54, 1.25
last figure should be "1568"

- p.55, 1.11
"Emb.394" should be "Emb.370"
- p.61, 1.15/20
"construction" should be "dismantling"
- p.62, 1.4
"construction" should be "dismantling"
- p.62, 1.7
"Emb.149" should be "Emb.176"
- p.63, 1.8
first word "Abur" should be "Wolfen"
- p.70, 1.2
delete "and" after "people"
- p.80, 1.21
"page 9518" should be "page 8518"
- p.85, 1.7
"Emb.1377" should be "Emb.1399"
- p.86, 1.26
Insert the following sentence after last word "page 48)"
"The female official Heidehausen who was charged with the care of the
foreign women describes clearly the conditions of life of the foreign
female workers and Heidehausen's understanding attitude towards them."
- p.88, 1.3
"Russians who were" should be "Russian who was"
- p.95, 1.3
"detainees" should be "immates"

Kimball

CLOSING BRIEF BUERGIN

Miscellaneous.

In 1920 the defendant BUERGIN started work as a chemist in the plant Rheinolden of Messrs. Griesheim-Elektron, which in 1925 amalgamated with other chemical enterprises to form the IG Farbenindustrie A.G.. After a period of about three years he became works manager there. In 1931, Dr. PISTOR, the head of the Betriebs-gemeinschaft Mitteldeutschland (Works Combine Central Germany) of the I.G. at that time, called him to Bitterfeld and made him head of the plant Bitterfeld-South, mainly because of his special knowledge of the alkali-chloride electrolysis (transcript page 8342). At first BUERGIN mainly worked on improvements to the older plants of Bitterfeld-South and concentrated on the alkali-chloride electrolysis and the production of bichromate of potash (Affidavit PISTOR, BUERGIN Exh. 25 BUERGIN Doc. Book III page 2). In Rhein-felden, BUERGIN had been made Prokurist in 1926. In 1934 he became deputy director; this was merely a title, which did not alter his position as Prokurist under commercial law. (BUERGIN Exh. 3, BUERGIN Doc. Book I page 2). On 1 January 1936 he was appointed deputy member of the Vorstand and on 1 July 1938 he was entered as regular member of the I.G. Vorstand in the official trade register in Frankfurt (Main). (BUERGIN Exh. 2, BUERGIN Doc. Book I page 1).

CLOSING EXHIBIT BUERGIN

BUERGIN was nominated exclusively by virtue of his qualifications (PISTOR Aff.avit, BUERGIN Exh. 79, BUERGIN Doc. Book VII page 3). With his appointment as member of the Vorstand, BUERGIN also became head of the Works Combine Central Germany in place of PISTOR.

In addition to the plants Bitterfeld-South and North and the dye-factory Wolfen, the plant Rheinfelden, as well as Doberitz, the newly erected magnesium-works Aken and Stassfurt, furthermore the factories Tautschenthal and Scherfeld also belonged to the Works Combine. (Transcript page 8347).

BUERGIN was a member and as from 1936 chairman of the chlorine-subcommission, which dealt with the technical problems of chlorine and caustic alkali, furthermore he was a member of the Inorganic Commission. As member of the Vorstand he also became ^amember of the Technische Ausschuss (Technical Board) - Too - and of the Chemicals-Board - Chem - (Transcript page 8350). The defendant BUERGIN has been charged with his "participation under KRAUCH in the Four Year Plan". According to BUERGIN's testimony, he was instructed by Dr. PISTOR in 1936 to offer his services as chlorine specialist to the then raw-material and foreign currency exchange-department, when it needed statistical material on the production of chlorine. Thereupon, under his direction, a questionnaire for the entire German chlorine industry was drawn up; this completed his assignment. Statistical material, which was required by KRAUCH's Office later on, was supplied by BUERGIN's secretariat (Transcript page 8351). The fact that BUERGIN, in October 1936, after the publication of the Four Year Plan was nominated by the Economic Group Chemical Industry as "Expert for the Alkali-chloride electrolysis" in KRAUCH's

CLOSING BRIEF BUERGIN

office and that the Economic Group informed BUERGIN accordingly (Prosecution Exh. 1961), by no means led to his becoming KRAUCH's permanent consultant or "Referent", as which he was arbitrarily listed by the recorder of a meeting of the Chemz in November 1936 (Prosecution Exh. 1962). KRAUCH's closest collaborator, Dr. Gerhard RITTER has indeed testified that KRAUCH as GEChem (General Plenipotentiary Chemistry) "occasionally also consulted" Dr. BUERGIN as expert on chlorine problems, in addition to consulting the many other experts from the entire chemical industry. RITTER saw BUERGIN approximately 2 to 3 times in KRAUCH's office, and knows that he as very seldom called to Berlin. BUERGIN's activity as a consultant did not even represent 1 % of his entire work. Usually Dr. VORLAENDER, who was also a chlorine specialist, appeared in his place in KRAUCH's office, (BUERGIN Exh. 4, BUERGIN Doc. Book I page 16). KRAUCH confirms this. (Transcript page 5426). BUERGIN's activity within the Four Year Plan was limited therefore to the occasional supply of statistical material relating to chlorine. He did not deal with the sector "light metals" within the Four Year Plan and, according to RITTER, he was not considered by KRAUCH as an "expert for light metals".

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At a late period during the war, the advisors or so-called "Fachbeauftragter" (appointed specialists of the G.B.Chem (General Plenipotentiary Chemistry) were simultaneously appointed as Chiefs of the Technical Committee for the corresponding sub-sections (Fachgruppen) of the Economic Group Chemical Industry, into which the firms of the chemical industry had been forcibly incorporated. Therefore as one of the 73 "Fachbeauftragten" BUERGIN also became Chief of the Technical Committee for the sub-section Soda, Caustic Alkalines, Chlorine etc., and next to him Dr. VORLAENDER was also specifically mentioned. (Proc. Exh. 475 Proc. Book 22 page 19; Affidavit, BUERGIN Exh. 4, BUERGIN Doc. Book I page 17) BUERGIN remembers one single occasion when, as chief of the Technical Committee, his services were required on behalf of a non-affiliated chlorine factory (Transcript page 6352). Thus the Prosecution's assertion that BUERGIN had been KRUECHS official adviser (Trial Brief I page 23) is recorded its proper significance.

BUERGIN also became a Military Economy Leader (Wehrwirtschaftsfuehrer) after 10 of his subordinates had already been appointed as such. It is characteristic of his slight interest and the slight importance which he attached to this title that for a long time, he ignored the order to produce documents for his appointment to Military Economy Leader, which was issued by the Regional Armament Office at Halle in February 1941 (BUERGIN Exh. 5, BUERGIN Doc. Book I page 4); it was only after receiving a further request that he sent in the documents, so that the I.G. Bitterfeld finally received notice of BUERGIN's appointment as Military Economy Leader from the Armament Inspectorate in Magdeburg, in September 1943 -

CLOSING BRIEF BUERGIN

2½ years after the first request had been received. (BUERGIN Exh. 6, BUERGIN Doc. Book I, page 6) BUERGIN's services were never required in his capacity of Military Economy Leader, neither was he entrusted with any special tasks. (Transcript page 8354).

BUERGIN has stated with regard to his political attitude that as factory chief in Rheinfelden, he was a member of the German Economic Party - a party of the centre - and in this party was also municipal councillor in Rheinfelden (Transcript page 8342). He was accepted as a member of the NSDAP with effect from 1 May 1937, and entered this party without relinquishing his liberal attitude. He held no office in the Party whatsoever (Transcript page 8354). At that time, it was only by joining the Party that a factory chief could gain a position enabling him to defend himself against attacks from various Party organs to whose influence he was subjected, and against those of the German Labor Front (DAF). As his predecessor, Pistor, announced, he did not know that BUERGIN was a Party member at the time when he proposed him as his successor; "neither would such considerations have played any part" (BUERGIN Exh. 79, BUERGIN Doc. Book VII, page 3).

Several witnesses have made statements concerning BUERGIN's political views: The Swiss, FOEHR, Chemist and employee in Bitterfeld, knew BUERGIN for many years as a loyal superior, both towards his German and foreign employees. In spite of the danger incurred to his own person he steadily maintained his exceedingly critical attitude towards National Socialism.

CLOSING BRIEF BUERGIN

It was only due to BUERGIN's personal intervention that FOERH escaped the Gestapo, that in a political trial in 1944, he was acquitted by the Special Court in Halle and that he was subsequently able to leave Germany unmolested. BUERGIN also rendered the same assistance to other employees. (BUERGIN Exh. 7, BUERGIN Doc. Book I page 7). Dr. MARI, until today a chemist in Bitterfeld, stated that BUERGIN retained him in his employment, in spite of his half-Jewish ancestry and the political difficulties arising therefrom. (BUERGIN Exh. 60, BUERGIN D. c. Book VII, page 5). According to the affidavit given by Dr. SCHUETZ, the former chief of the Farben factory at Wolfen, his predecessor, Dr. MAY, who was 100 % Jewish was employed by Pistor and BUERGIN as a scientific collaborator in Wolfen until 1938, and was then able to go to England, without being molested, and to join the largest English chemical factory; the ICI. BUERGIN and SCHUETZ were repeatedly bitterly attacked because of their conduct with regard to MAY. (BUERGIN Exh. 78, BUERGIN Doc. Book I, page 25). Professor HENCKY reports that BUERGIN always assisted those employees to whom the Party objected on racial grounds, and that at the end of the war, he did not carry out the orders for destruction and immobilization which were issued. (BUERGIN Exh. 44, BUERGIN Doc. Book V, page 27 ff). TSCHERTER, Dr. SIEBEL and ZABEL have also spoken of BUERGIN's liberal

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and humane conduct as a superior, of his attitude of rejection towards the NSDAP, and his strong resistance against political encroachments. BUEGIN was by no means a National Socialist. (BUEGIN Exh. No. 43, 47 and 53, BUEGIN Doc. Book V, page 1, 44, 69 ff). This has also been confirmed by the witness JOERSS, who described BUEGIN's strained relations with the Party organs (Transcript page 6523). This attitude also explains the sympathetic and far reaching support which BUEGIN gave to church institutions and social welfare organizations. (Affidavit QUACK, BUEGIN Exh. 8, BUEGIN Doc. Book I, page 11 ff).

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Count I of Indictment

Planning, Preparing and Executing of Aggressive Wars.

The Prosecution accuses the I.G. and therewith the defendants, of having procured and equipped the Nazi war machine, being aware that this war machine was to serve the purposes of the Nazi policy of expansion. (Trial Brief I page 26).

1. Light Metals.

To begin with, the extensive amount of material produced by the Prosecution and which refers to the light metal production of the I.G. should be examined in this connection. (Trial Brief I page 38 ff).

A. Magnesium.

When BUERGIN came to Bitterfeld from Rheinfelden, Dr. LOSCHEL, an experienced magnesium specialist was in charge of magnesium production. (BUERGIN Statement, Transcript page 8349). Thus the magnesium foundry also came under BUERGIN's supervision, but he was not particularly interested in magnesium. BUERGIN was no light-metal specialist. (SEBASTIAN, Transcript page 8558) Department E, the processing department for electron metal in the works at Bitterfeld-Sued and the special domain of that pioneer in the field of magnesium, Dr. PISTOR still preserved its independence for many years, according to PISTOR's statement. (BUERGIN Exh. 25 BUERGIN Doc. Book III page 2).

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According to his statement, BUERGIN only became interested in magnesium in 1936. (Transcript page 11867, 11677).

The story of the development of magnesium and its chief alloys; electron and hydronalium is unfolded in the detailed advertising pamphlet from I.G. entitled "30 Years of Electron" (BUERGIN Exh. 14, BUERGIN Doc. Book II page 1 ff and 17 ff). Following a boom in production from the first world war until the end of the nineteen-twenties, in the years 1931/1932 it sank to a minimum. At that time approximately only 1200 tons per year were sold despite a capacity of three times that amount. (BUERGIN Transcript page 8355). However, regardless of this unfortunate conjuncture, during these years I.G. viewed the prospects in the field of light metals with optimism because in 1928 they had developed a new, electrolytic process which facilitated the economical and inexpensive production of magnesium. Through the energetic propagation of this process, various new fields of civil application were discovered, or stood on the threshold of discovery. (PISTOR, Transcript 11874). Therefore, during the meeting of the Inorganic Committee on 27 March 1933, the production of 500 tons of electron metal per month, was set as the initial target for Bitterfeld. (Affidavit by von ZEIDER, BUERGIN Exh. 9, BUERGIN Doc. Book III page 21).

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After the new production method had been fully developed technically and mature experiences had been made, the production and sale of magnesium rose steadily from 1933 onward within the general revival of the German economy. BUEGIN did not participate in the planning and the construction of the plants Aken, Stassfurt and Leutschenthal and in the negotiations with the Air Force concerning the contracts in connection with these plants. (Pistor, protocol page 11875). As PRIMERICE testifies (Buegin-Exhibit 10, Buegin Doc. Book II, page 36), BUEGIN was not a magnesium socialist and ostensibly reserved with respect to the construction of Aken. After the plant had been put into operation he paid a brief visit to Aken. Contrary to STRUSS' statement (Prosecution Exh. 235, Book 3) according to which military reasons had been decisive for the selection of the sites Aken and Stassfurt, Buegin proved convincingly that the natural conditions - such as the inexpensive source of power on the basis of Central German brown coal and the availability of magnesium chloride lye and dolomite - favored the establishment of the plants in Central Germany. A further statement of STRUSS in one of his innumerable Prosecution affidavits (Pros. Exh. 98, Doc. Book 5) to the effect that prior to the selection of the building site in Aken, the camouflage from the air was observed by the Air Force in test flights, is contradicted by FRK ABER's statement (transcript page 7177) that he considered such a camouflage most doubtful in view of the direct proximity of the Elbe, and by

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FRIEDRICH's statement (Buegin-Exh. 10, Buegin Doc. Book III, page 36) that a safe camouflage of the plant Aken was out of question because the pine forest located there would have been destroyed within a short period by the waste gas; this statement was also confirmed by PISTOR (Buegin Exh. 25, Buegin Doc. Book III, page 6). The Prosecution states that Aken and Stassfurt were established at the demand of the Air Force. This is confirmed by KESSELRING (Buegin-Exh. 11, Doc. Book III, page 42). Pistor (Buegin-Exh. 25, Buegin Doc. Book III, page 6) states that he as the then chief of the works combines Central Germany and his collaborators in the field of magnesium, to whom BUEGIN did not belong (transcript page 11868), saw no objection in the fact that the plants were destined to serve the revival of the German "chryseot", all the more since the Reich had promised to support the IG in the promotion of electron metals in private industry. The contracts of the IG and the Reich Air Ministry - specifically classified as secret - concerning both plants (Prosecution Exh. 573 and 574, Doc. Book 30) were not known to BUEGIN. The text of the Aken agreement which was not submitted by the Prosecution (Buegin-Exh. 13, Buegin Doc. Book III, page 42) as well as the Stassfurt agreement reveal that in addition to priority deliveries to the Reich - based on a Reich guarantee of acceptance - the IG was also permitted to fill orders of third parties. If this was done, the IG had to refund the amortization payments of the Reich

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in taxes on the total amount of metal furnished to third parties. The witness JUNGE (Buegin-Exh. 82, Buegin Doc. Book VII, page 9) computed on the basis of data that in this manner approximately 9,6 million RM were repaid to the Reich until 1944. While Alton assumed production in 1935, Stassfurt, as a specific emergency plant, was not put into operation until shortly before the war. No action was taken following Conrad's proposals to Franz (statement Buegin, transcript page 8360) contained in the letter of 31 October 1930, which was submitted as Pros. Exh. 107 (Doc. Book 5).

The assertion of the Prosecution in the trial brief part I, page 38, "many of the plants" - namely light metal plants - "were constructed as stand-by plants" is incorrect in view of the fact that only Stassfurt was an emergency plant.

BUEGIN did not participate in the communal patent agreement (Pros. Exhs. 575-577, Doc. Book 30) (transcript page 8358). The agreements are typical examples as to how the Reich authorities began to direct private industry as early as 1934.

In a memorandum of a conference in the Reich Air Ministry on 5 February 1935 (Pros. Exh. 578, Doc. Book 30) Dr. PISTON expressed his great anxiety in connection with an order for deliveries of magnesium which had been placed with the rival firm Wintershall by the Government,

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since the deliveries to the authorities were bound to stop one day and then the remaining production would be very inconsiderable only. The order for 150 tons (per month) which was possibly to be placed with Wintershall would cover Germany's total requirements in peace time. PISTON who was annoyed about the unpleasant competition and the unfair machinations of Dr. BAEER, who participated in the conference, presented the peace time requirements for business reasons at a particularly low figure against his own judgment (Buegin-transcript page 8358). KESSELING stressed in his affidavit (Buegin-Exh. 11, Buegin Doc. Book III page 43) that the magnesium sales in Germany were undoubtedly larger and that PISTON, by giving a figure of 150 tons, had arbitrarily chosen the amount to be ordered from Wintershall so as to eliminate the rival firm with the assistance of the Reich Air Ministry. Apart from the fact that already at that time the requirements for private industry had been considerably higher, PISTON was hardly able to predict the trend of requirements. He did not consider expert at all.

The various production plans which had been established by the organs of the Four Year Plan from 1937 onward and according to which BAEER calculated the share of the IG in the planned production (Pres. Exhs. 428 and 429, Pres. Doc. Book 20) were of course not known to the IG and least of all to the defendant BUEGER, being plannings of the highest Reich authorities and frequently classified as "Top Secret" (statement Buegin, Transcript page 8381).

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The actual development of the capacities is described approximately correctly by NEUKIRCH (Pres. Exh. 590, Pres. Doc. Book 30), the actual production of magnesium by STRUSS (Pres. Exhs. 512 and 513, Book 34). The expenditures for the production and processing plants for magnesium, compiled by STRUSS in Pres. Exh. 587 (Doc. Book 32), have been corrected by the latter in his new affidavit (Buegin-Exh. 81, Buegin Doc. Book VII, page 5). In order to ascertain the actual expenditures of the IG, the costs which were not finally borne by the IG but refunded by the Reich as they arose in connection with plants erected by order of the Reich - namely the costs of the plants in Aken, Stassfurt, Teutschenthal and Moschleben - have to be deducted from the amounts given in this affidavit. The remaining sums are not very considerable. The magnesium plant Moschleben - planned in 1941 - was furthermore never completed and never put into operation (transcript page 8364).

Extensive information concerning the technical development of the electron metal and the aluminium alloys Hydronalium, Igedur etc. is given in the documents of Doc. Books Buegin II and III, specially also in the propaganda pamphlet "30 Years of Electron" (Buegin Exh. 14, Buegin Doc. Book II, page 1). The witness WESER also refers to the utilisation of magnesium for the most varied peaceful purposes which offers large scope for further development.

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It cannot be denied that after initial difficulties had been overcome and particularly due to their light weight, magnesium alloys were also used for armament purposes. Thus especially the airplane construction with magnesium suggested itself. It is certain that the IG and the defendant EBERG know of this utilization of magnesium, however, they did not know details of the technical application, amounts required for the individual war implements and their number and they with their limited knowledge were unable to arrive at the conclusion of a planned aggressive war. The witness MILCH stated in connection with Prosecution Exh. 1970 that this information concerning types of airplanes and their production figures, passed on by an official of the Reich Air Ministry to gentlemen of the IG, constituted a violation of the rules of secrecy (transcript page 8548) and according to the statement of the witness RECHER (transcript page 8556, 8570) neither EBERG nor any other leading employees of the IG Bitterfeld gained knowledge of this information. The following must be stressed in connection with the affidavit ROEFPSOHN (Proc. Exh. 2251, Doc. Book 94): Apart from the fact that the publications concerning airplanes in no way revealed the actual level of development of the air force, not even an experienced specialist in light metals was able to compute the number and types of airplanes from the quantities of light metals delivered (see Milch, Eberg-Exh. 99, Doc. Book IX).

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Much less can it be deducted from Prosecution Exhibit 2244, Document Book 94, that I.G. Bitterfeld or for that matter BUERGIN himself were informed on the extent of the torpedo-boat construction program. Although the Bitterfeld Department Light Constructions advised consumers on the applicability of light metal-alloys according to their specific qualities, it could, nevertheless, supply neither finished light metal installations nor even the plates required for them, nor other semi-finished products, but had to refer consumer-firms in this respect to processing works which the IIG supplied with pig-metal (Masseln) and semi-finished products (BUERGIN, transcript page 14315).

BUERGIN's communication in the meeting of the Vorstand on 9 January 1942 that, by the replacement of duraluminium by the newly developed Hy 43-alloy, a goal had been reached which had been their aim during six years' work (Prosecution Exh. 1971, transcript page 8846) means only that an improved alloy with a reduced proportion of copper had been established but not that systematic preparations for war had been advanced by this technical improvement. Of the use of magnesium in tank construction, WILBERT - in Prosecution Exh. 705, Prosecution Document Book 37 and in his cross-examination - has given a very obscure account. According to a statement by the witness for the Defense, ZEEBER, who made an excellent, clear and distinct impression, magnesium, if used at all, was employed only for unimportant parts, such as seats or signal installations in tanks. (Transcript page 8556). According to the correspondence

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HASPLIGER-ZIGLER of November 1938 (Prosecution Exhibit 2013), gun-wheels of electron metal were developed and the experience of the manufacturers was readily passed on abroad, so that by the end of 1938, electron was already applied in many countries for gun-wheels and other gun-parts. Prosecution Exh. 745, Prosecution Document Book 40, proves that trials were held in 1937 with artillery projectiles made of electron. These trials were not known to BUEGIN (Transcript page 8365), especially as the Dr. NEUKIRCH, mentioned in the Exhibit, was no longer active at Bitterfeld when BUEGIN was appointed member of the Vorstand and thus also Chief of the Scientific Laboratory.

I.G. manufactured casings for incendiary bombs from electron which were known by the name of "textile casings". The actual amount of electron tubes supplied for use in the production of incendiary bombs has been given by FRANZ in his affidavit (BUEGIN Exhibit No. 83, BUEGIN Document Book VII, page 11). According to this, the proportion of these tubes in the total magnesium production of I.G. was not 50 or as much as 90 % as maintained by STRUSS (Prosecution Exhibits 98 and 744, Book 5 and 40) but, after an isolated maximum of 40 % in 1935 it rapidly decreases to an average of 8,2 % during 1933 to 1944. This agrees with affidavit KESSELEINO (BUEGIN Exhibit 11, Document Book III, page 41) according to which demands decreased considerably with regard to incendiary bombs which had originally been over-estimated, and also with the statement by MILCH (transcript page 8538).

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Furthermore the I.G., as stated by the witness WEBER (transcript page 8557), merely produced the tubes which, according to FRANZ (compare above mentioned exhibit 83, BUEBGIN Document Book VII page 11), were supplied in a rough state for further processing to four purchasers appointed by the Air Ministry. As further stated by the witness WEBER, I.G. exclusively produced magnesium-blocks and other unfinished parts, which had to be processed to semi-finished or finished products in foundries and other factories. (Transcript pages 8562, 8571). Altogether about 70% of the magnesium-alloys produced by I.G. were sold in the form of pig-metal to foundries and other processors. The rest was sold as semi-finished products to manufacturers; I.G. thus did not produce any finished articles. (BUEBGIN, transcript page 8367). HANFLIGER (transcript page 9233) confirms that most of the electron metal was supplied to more than 200 foundries. Therefore, even if I.G., at the request of Army-authorities, investigated the applicability of magnesium for certain special parts, neither I.G. nor BUEBGIN could have a knowledge of the extent to which magnesium was used for armament purposes.

Aluminium-magnesium powder 25-17/1 was applied for thermite charges in welding and for other purposes, but also as incendiary charges in incendiary bombs. A new grinding-installation demanded by the Airforce after an explosion was erected at Staessfurt,

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according to the witness LANG (transcript page 8580), but was never in operation as all requirements could be covered by the minor Bitterfeld plant. I.G. did not manufacture the incendiary charges but only the powder. This magnesium powder mentioned by the Prosecution served mainly for pyrotechnics, for signal cartridges and flashlights. (Statement BUEHRIN, transcript page 8367). Witness LANG, corroborating these purposes of application, states that production varied quite considerably in amount and that approximately half of it, that is to say about 100 tons annually, was exported (transcript page 8579).

The statement by the Prosecution that it would have been impossible for Germany to wage war without magnesium, is contested by BUEHRIN with an allusion to the priority of aluminium (transcript page 8373). MILCH confirms that even without magnesium, not one aeroplane less would have been built and that German armament would not have been reduced to any noticeable extent. (Transcript page 8542). WEBER (transcript page 8558) emphasizes that magnesium could be replaced by many other substances. Neither I.G.'s extensive propaganda for the use of magnesium and its alloys for various civil purposes, which had been developed by them at so great an expense, nor the investment of their own means in the factories, nor the safeguarding of possibilities for civil supplies in government-contracts, nor the sharing with

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foreign countries of experiences on the field of magnesium and the assistance given in constructing foreign magnesium-factories, could suggest to I.G. or to BUEGIN that aggressive warfare was planned with the magnesium manufactured by them (transcript page 8372). In so far as I.G. established magnesium plants on government request, this was certainly done under pressure of the authorities; any German firm would have been compelled to comply with government-demands, as has been emphasized by the witness MILCH (transcript page 8540).

B. Aluminum.

I.G. as such did not produce aluminum, but it, and the Metallgesellschaft each, held an equal share of one half in the Aluminiumwerk G.m.b.H. at Bitterfeld. The company had 2 to 4 managers who were appointed on an equal footing by the Metallgesellschaft and the I.G. (BUEGIN, transcript page 8360). Until 1938 BUEGIN did not take an active part in the Aluminiumwerk and was not responsible for its production. (Transcript page 8349). After 1938 he was one of I.G.'s representatives in the members' meeting of the Aluminiumwerk. A statement on its structure was made by the former manager HEULRAUX (BUEGIN Exhibit 12, BUEGIN Document Book I, page 28). Witness STEUSS, viewing matters merely from the angle of the Technical Committee and having, quite obviously, superficial knowledge only of the details,

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states that I.G. had the technical direction in the Aluminiumwerk (transcript page 1906, 1925, 1927). This statement is erroneous. The technical direction was of course in the hands of the manager and not of I.G. as partner. On account of the proximity of I.G. magnesium-plants and on account of the similarity of production procedure, it is however understandable that I.G. Bitterfeld acted as technical adviser to the Aluminiumwerk and that both plants contacted each other in technical matters.

With the recovery of German economy following the period of depression, German aluminum production in general also increased and with it that of the Aluminiumwerk Bitterfeld. Prosecution Exhibits 1815, Document Book 30 and 1962 prove that I.G. was very reticent with regard to demands for increased production as expressed by the authorities. It has not been established that I.G., let alone BIERGIN personally, knew the government's secret plans as to aluminum. (For instance Prosecution Exhibits 442 and 455, Document Book 26 and 28) SEIBERT states in the affidavit mentioned above that from 1935 to 1944, the plants of the Aluminiumwerk in Bitterfeld, and after 1941 also those in Aken, turned out a fairly steady proportion of 14,6 to 18,1 % of the total German production. Half of this, that is to say only 7,4 to 9 % of the total German production, falls to the I.G., whose participation (in the company) amounts to 50 %. This fairly steady share of the Aluminiumwerk in the total production is based on

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agreements by the aluminum manufacturers. I.G. had no control over the sale of aluminum, this being effected entirely by the Aluminium Verkaufsgesellschaft (AVG) in Berlin (BUEGIN, transcript page 8361). This sales organization was also responsible for any stock of aluminum ordered by the Wehrmacht, such as has been mentioned by you HUIFEB (Prosecution Exhibit 746, Document Book 40). The Prosecution has not submitted evidence of the use of aluminum in armaments.

2. Ferro-Alloys.

HAEFLIGER (transcript page 9446) and the witness LANG (BUEGIN Exhibit 95, Document Book VII), have made statements with reference to the Prosecution Exhibits 7007 and 7008 which prove that conferences were held at Eiterfeld in 1936, a long time before BUEGIN began his activity as Vorkamf. According to this, a transfer of Wolfram-ores from the eastern frontier of the Reich to Central Germany was not effected and no ores for armament purposes were stored at Eiterfeld. Ferro-Wolfram and ferro-molybdenum were never again manufactured in the out-of-date plant Teutschenthal. On the contrary, the furnaces there were dismantled and the factory Teutschenthal was then used for the production of Magnesite, a preliminary product for Magnesium.

closting Walter Buerger

3. Production of preliminary agreement products,
particularly of preliminary explosive products
in the Betriebsgemeinschaft Mittelddeutschland
(Works Association Central Germany).

For the valuation of BUERGER's responsibility in the sense of the indictment it is vitally important, first of all to state the following:

a) Up to 1937 BUERGER was as Production Manager, subordinate to Dr. PISTOR, the sole responsible Vorstand's member;

b) BUERGER had nothing at all to do with any products of organic chemical industry up to the end of 1937; neither had he anything to do with inorganic products in so far as they were produced outside his plant Bitterfeld-South, until a change took place in the management of the plant Bitterfeld-North, in 1936, when he was also given the supervision of the entire production of the other works of the Betriebsgemeinschaft Mittelddeutschland.

In the same period, BUERGER was not responsible for the organic products Diglykol, a cellulose, various chloroform-derivatives, picric acid and phosgene as far as these were developed prior to January of 1938. The organic products chloroacetonitrile and peroxide, which were also mentioned by the Prosecution, were never produced in the Betriebsgemeinschaft Mittelddeutschland.

The Prosecution has quite particularly taken up the question of Diglykol produced in Wolfen,

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a preliminary product for gun-powder. There had been negotiations between the Wehrmacht and I.G. concerning production of Diglykol at Wolfen from 1934 onwards (Prosecution Exhibit 108 sqq., Vol. 5), all documents showing that the Wehrmacht had initiated them. I.G. was very reserved according to Dr. SCHONER, Chief of Farbenfabrik Wolfen from 1936 onwards (BURGIN Exh. 78, BURGIN Document Book 1, page 19). But had to start this production under pressure of the Wehrmacht. It may have been taken into account in this connection, that only I.G. was familiar with the Diglykol production method and that it did not desire to let anybody else know about this method and essential experience in the field of ethylene chemistry, which is very promising also for peace time needs (cf. in particular affidavit BEMANN, Prosecution Exh. 119, Document Book 36, page 145 sqq., 178 sqq.; also BEMANN's affidavit to page 5355).

The Wehrmacht plant, which was not the first plant of this type - there was already a Diglykol plant at Ludwigshafen (Prosecution Exh. 612, Vol. 34) - was established at Wolfen, apparently by SCHONER's predecessor Dr. MAT on the site of Farbenfabrik Wolfen, but away from I.G. works and specially carved as it was the property of the Montangesellschaft which was owned by the Reich and was merely run by I.G. Diglykol production was started at Wolfen in 1937; the final contract with the High Command of the Army was apparently never signed, its draft (Prosecution Exhibit 594, Document Book 33)

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enumerates the many letters containing the OKH (High Command of the Army) orders with which I.G. was invited to establish and enlarge the plant. BUEGIN took part neither in the construction nor - before he became a member of the Vorstand - in the management of the Wolfen Diglykol plant (BUEGIN, transcripts page 8385; PISTOR affidavit, BUEGIN Exhibit 25, Document Book III, page 19). According to SCHROEDER (cf. above affidavit, BUEGIN Exhibit 78) he was, in 1939, confronted with accomplished facts. PISTOR's file note dated 14 November 1936, the only document of this period in which BUEGIN is mentioned, (Prosecution Exh. 114, Book 5) was, as he declared (transcript page 8385), only passed on to BUEGIN "for information and return", in order to inform him about any possible chlorine requirements of this plant. Capacity, production, sale and enlargements of the plant were ordered by the Wehrmacht which gave the instructions and the funds for the construction of the plant. (BUEGIN transcripts page 8386). The scant utilization of the plant's capacity in the first period after its establishment is significant (cf. Prosecution Exhibit 1817, Vol. 53, page 29 of the document). Even in 1938 the Army Ordnance Office held back and did not fully utilize the establishment, as may be seen from the draft of Ambros' letter to Krauch, dated 27 June 1938 (Prosecution Exh. 438, Vol. 20, and statement Ambros, transcripts page 7965). In view of this fact the idea of an imminent war could not arise in BUEGIN's mind.

According to WAGNER's affidavit (Prosecution Exh. 734, Vol. 40)

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Diglykol was also stated to be stored in the Army's Wolfen plant by order of the Army. This intention was expressed by Dr. JAHN, the representative of the Army Ordnance Office, as early as 1937 (Prosecution Exh. 119, Doc. Book 5). SCHENKER (BUERGIN Exh. 78) states that the Army Ordnance Office built a small tank store for Diglykol with aluminium reservoirs at the site owned by the Reich. Consequently both the Diglykol storage as well as its production was directed by Wehrmacht agencies (see also ERMANN, transcripts page 5356).

What applies to Diglykol, applies, on the whole, also to stabilizers, an intermediate product for powder production which is also organic matter. Contrary to STEUSS' (Prosecution Exh. 235, Vol. 8 and Prosecution Exh. 744, Vol. 40) and WAGNER's (Prosecution Exh. 247, Vol. 9 and Prosecution Exh. 734, Vol. 40) statements, the Wolfen stabilizer plant was not put into operation as early as 1937 or the beginning of 1939, but was only finished at the outbreak of the war and started operations after some initial failures, in the first months of the war (cf. SCHENKER, BUERGIN Exh. 78; BUERGIN transcripts page 8469; ERMANN transcript page 5358). Nor did BUERGIN take part in the construction of this stabilizers plant which had been planned since 1934; it was a "Montan plant" of the Reich exactly like the Diglykol plant and was intended as an emergency plant, at the same time as an evacuation plant for Uerdingen which, situated near the frontier, was in a vulnerable position. The stabilizers were always removed immediately after production.

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and were consequently not stored. STRUSS' statements about storage of stabilizers in Prosecution Exhibit 744 Vol. 40, under No. 7, do not refer to Wolfen; incidentally, he has revoked his statements which are quite inexact as always (transcript page 4136).

In the draft of the Wolfen Montan plant contract (Prosecution Exh. 594, Vol. 53) reference is also made to the OKH's (High Command of the Army) desire to have an emergency plant for weapon decontamination agents constructed at Wolfen. The weapon decontamination agent is an oily substance which serves to remove all vestiges of poison gas (Lust) from weapons, and is consequently a defense measure. OKH was to begin with very actively engaged in stepping up production (Prosecution Exh. 122, Vol. 5), but considerably reduced its demands later on (1938) (Prosecution Exhibit 254, Vol. 10). As no poison gas was used during the war, the weapon decontamination agent attained no practical importance. According to BUEGIN's statement (transcript page 5368), weapon decontamination agents were produced in the Wolfen Montan plant and, in the later years of the war, also at Doberitz. SCHROEDER (BUEGIN Exhibit 78, BUEGIN Document Book I) states that weapon decontamination agents were produced in the Wolfen Fabrik to a small extent from 1935 onwards; later on during the war, at the request of the Army Ordnance Office, (cf. also EHMANN, transcript page 5361) to a larger extent in the Montan plant. Prosecution Exhibit 594, Vol. 33 points to the same fact. The production was therefore the result

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of an order by military agencies. The Prosecution witness WAGNER confirms in Prosecution Exh. 734, Vol. 40, that the weapon decontamination agent was developed at the instigation of the Army Ordnance Office and was stored, after production, at Army Ordnance supply offices, i.e. not at I.G.

The production of chloride acetoacetic, also called Omega salt, an irritant, had been planned from 1935 onwards in several talks, according to Prosecution Exhibits 108, 109, 114 and 118. However, it was in fact never produced at Wolfen or Bitterfeld, as is shown by BURGIN's statement (transcript page 8393), and SCHÖNER's oft-quoted affidavit as well as by EHMAN's affidavits, Prosecution Exhibits 659 and 1819, vol. 36.

In Prosecution Exhibit 1817, Vol. 33 picric acid, an organic product, is referred to as an "exclusively military explosive" (page 9 of the document). Only pure picric acid - which was not produced at Wolfen - (SCHÖNER Affidavit, BURGIN Exhibit 78, Document Book I, page 23) can be used as an explosive. On the other hand, Wolfen had for a long time been producing raw, moist picric acid for dyestuff production, and the Foreign Office gave a certificate to I.G., about 1925, to the effect that this production was not contrary to the Versailles treaty. The raw picric acid that was produced, was consumed at Wolfen. It was only during one year - 1935 or 1936 - (cf. cross examination SCHÖNER, transcript page 11722 and statement EHMAN, transcript page 5362)

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that Wolfen, after the explosion of the Reinsdorf explosive factory which does not belong to I.G., temporarily supplied moist picric acid to a plant of the Dynamite A.G. The latter then had to transform the raw picric acid into pure picric acid by means of a "complicated transformation process" (cf. SCHOENER, transcript page 11718). This incident, which was not repeated, took place at a time when BUEGIN had no competency whatever in this field.

Dinitro-Apisol, an preliminary explosive product, which was to be produced at Wolfen in the mob case (Prosecution Exhibit 119, Vol. 5), is another organicum. This product was produced in the Farben factory Wolfen only during the second world war, i.e. on a demand by the Army Ordnance Office (SCHOENER affidavit, BUEGIN Exhibit 78, Doc. Book I, page 20 sq).

Perstoff, a poison gas known from the first world war, was never produced at Wolfen or Bitterfeld. The plan for a Perstoff production is, it is true, discussed in Prosecution Exhibit 635, Vol. 35 - in 1939 -; BUEGIN merely received this document for information purposes, in view of anticipated chlorine requirements. The witness ZAHN (transcript page 11469), when examined with respect to Prosecution Exhibit 2314, has, however, stated that Perstoff was never produced, and this confirms BUEGIN's statement (transcript page 8394).

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Phosgene was used as ^aprimary product for stabilizers and was manufactured by request of the Army Ordnance Office at the army's Montan-Werke in Volfen as from September 1939, i.e. only after the beginning of the war (thus SCHOENER, BUERGIN Exh. 78, Doc. Book I, page 22). The statement that phosgene had already been produced in Bitterfeld during peace time was rectified by SCHOENER in a supplementary affidavit (BUERGIN Exh. 94, Doc. Book VIII, page 1). Preliminary discussions concerning the Volfen phosgene factory are already mentioned in Prosecution Exhs. 114 and 118, Vol. 5. As can be seen from the draft of the building contract of 1940 for the Montan-Werke, Prosecution Exh. 594, Vol. 33, production of phosgene was to have been increased to 600 tons per month. However, according to EHMAN (Prosecution Exh. 1819, Vol. 36), even in December 1944 output capacity was only 400 tons per month, whereas on 1 September 1939 there was no output capacity at all. - During the war, aerial bombs, delivered by other plants, were from time to time filled with phosgene by the Montan-Werke in a filling-station built there, at the request of the Air Force and at the expense of the Reich, (SCHOENER, BUERGIN Exh. 78; WAGNER, Prosecution Exhibit 618, Vol. 36; EHMAN, Pros. Exhibit 659, Vol. 36). The phosgene filling station for shells, also mentioned in Pros. Exh. 594, Vol. 33, was never built (BUERGIN, in page 8393, and EHMAN, Prosecution page 5360), and the filling of aerial bombs was soon stopped, according to SCHOENER's statement, because phosgene bombs were never used.

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Among the inorganic products of the Betriebsgemeinschaft Mitteldeutschland (Works Combine Central Germany) mentioned in the documents of the Prosecution, there are sulfuric acid and its concentrated form, called Oleum, nitric acid and its highly concentrated form, called "Hoko"; nitrate of ammonia, and losantin.

Oleum is usually used for the manufacture of dyes but can also be used for powder and explosives (BUEBGIN, transcript page 8389). It had already been manufactured in Wolfen since 1906, and is again being produced there today. (SCHOEKER, transcript page 11721). It has not been established to what extent Wolfen supplied oleum to manufacturers of explosives. Since Wolfen manufactured about 1000 individual chemical products, even SCHOEKER, manager of the plant, could not know what supplies were delivered to the various consumers, particularly since all products were distributed by a sales combine of the I.G.; still less could BUEBGIN, therefore, be informed about this, even after he had become head of the Works Combine. (SCHOEKER, transcript page 11931).

Sulfuric acid was also produced at Doberitz, and had been for a long time. By order of the Reich, establishments for the manufacture of oleum were built into the existing sulfuric acid installations at Doberitz and Wolfen "only for army purposes and only for the A-Fall", as can be seen from the oleum agreement of

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April 1937 between the Wifo and the I.G. (Prosecution Exh. 601, Vol. 34). Such emergency plants of the Wifo were at that time - as BURGIN has stated (tr. page 8389) - installed in all German sulfuric acid plants.

Wolffen has always produced nitric acid for fertilizer and, since the first world war, also highly concentrated nitric acid for dyestuff auxiliary products (SCHOKNER, BURGIN Exhibits 78). In one of the many secret surveys about the demand for primary products for explosives, Pros. Exh. 2061, Wolffen is mentioned as supplier of Hoko nitric acid for explosives production plants. During the war, the production of Hoko was of course considerably increased, i.e. both in Wolffen as well as in the establishments at Doberitz which, like the oleum-plants, belonged to the Wifo (BURGIN tr. page 8391, and SCHOKNER, BURGIN Exh. 78). These Wifo emergency plants, too, were established by order of military authorities (BURGIN, tr. page 8391; cp. also Affidavit MURCK, Pros. Exh. 668, Vol. 31). The Hoko-plant in Doberitz, which was to begin with managed by Sparte I, was not out under BURGIN's management until the outbreak of war. (tr. page 8391). The defendant SCHNEIDER has made a statement regarding the reasons why I.G. could not reject cooperating with the Wifo in the Hoko-plants, which were worked by order of the Reich (tr. page 7348). Mention is there also made of similar emergency plants in England (tr. page 7349). The emergency plant

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for explosives in Doberitz, mentioned by MURKIN in Pros. Exh. 568, Vol. 31, was not a plant of the I.G. (BUEHRIG, trans. page 8391).

Nitrate of ammonia which, as an ordinary commercial commodity used for making fertilizers, is produced in large quantities all over the world, has always been produced by IGFen for this purpose. According to Pros. Exh. 2317, the OKH ordered the I.G. in December 1938 to convert and supplement their installations at Wolfen and Bitterfeld for an additional output in case of mobilization, so that nitrate of ammonia could be used for explosives in the event of mobilization. The OKH financed this conversion in order to save having to provide an emergency plant of its own, and for a temporary period during the second half of the war, nitrate of ammonia was supplied to shell filling factories (SCHOKER in BUEHRIG Exh. 78; witness ZAHN, transcript page 11604-11606). Before the war, nitrate of ammonia was thus not used for armament purposes. On the contrary, the defendant OSTER has stated (transcript page 10694) that large quantities of nitrate of ammonia were sent to England from 1937 to 1938, from which those concerned surely could not have concluded that an aggressive war was imminent.

As from 1935/6, an installation for the production of sulfuric acid from gypsum was built in Wolfen. It was exclusively meant for the manufacture of artificial silk, viscose and cellulose wool at the nearby film factory Wolfen as well as for other civilian purposes (Statement PISTOR).

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transcript page 11870; WURSTER Exh. 55-57, WURSTER Doc. Book II; statement by WURSTER, transcript page 10953). The installation for sulfuric acid from gypsum was put into operation in 1938 (SCHROEDER in BUEGIN Exhibit 78, Doc. Book I, page 23). Sulfuric acid from gypsum was not suitable for the manufacture of primary explosive products. If, in spite of this, the Army was interested in it (Pres. Exh. 114, Vol. 33), then this was probably only done because the installations for the manufacture of sulfuric acid from gypsum could if necessary relieve the pressure on other sulfuric acid factories.

Losantin, a product for the neutralizing of lost on the human skin, had been produced at Bitterfeld-Mord for some time in powder form, and from January 1936 in tablet form. It is chloride of lime which could be stored, and had been developed from Perchlaron, a bleaching and disinfecting product which had been exported to a large extent. In August 1936, the Army requested an increase in the production of the tablets, and the I.G. installed the new machines necessary for the manufacture of the tablets after having been promised reimbursement for the expenses incurred in connection with the expansion of manufacture which would probably only be of a temporary nature. (Pres. Exh. 256, Vol. 10, and statement by LANG, transcript page 8578; BEMANN, transcript page 5361). The large quantity of manufactured tablets should not be allowed to obscure the fact that maximum production was about 250 tons per year (BUEGIN, transcript page 8368). Losantin is only a product for defense purposes.

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Witness for the Prosecution PALM (Prosecution Exhibit 665, volume 38) testifies that chlorine, caustic soda and benzene chloride for the war chemicals plant Dyhernfurth, erected in the second world war, were supplied by Ditterfeld. There is no evidence that BUEKGIN knew anything about these deliveries or their use; he himself denies having had such knowledge. (Transcript page 8393.)

C.

It is true that in order to establish that BUEKGIN - contrary to the statement by the Defense - was initiated in matters of the armament sector and the economic organization of armament, the Prosecution, in the cross-examination, presented Prosecution exhibit 1989, i.e. a letter of invitation to a meeting in April 1937 in Ditterfeld, at which BUEKGIN was to deliver a speech "on the production of the works and its importance as I (war), R (armament) and L (essential) products". BUEKGIN does not remember having given such a talk (transcript page 8404, 8470). The heterogeneous circle of those invited, which included even the Reich Ministry of Economy in Berlin, shows that its purpose was to clear up the muddle that resulted, after the announcement of the Four Year Plan, when numerous new authorities issued orders, by discussing the tasks of the works with these authorities. The planned talk was to help to stop the various Wehrmacht and Economy Ministry

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agencies from dominating the factories. The liaison officer for mobilization matters, von der HEY, who wrote these invitations, does not remember the meeting and BURGIN's speech being held. His view is rather that the Reich Ministry of Economy prevented the meeting from being held (Burgin Exhibit 100, Burgin Document Book IX). Thus the document proves nothing for the Prosecution and BURGIN does not remember the event for the simple reason that in fact he never held that speech.

In brief, it may be said concerning the above productions, that they were either begun or extended for armament purposes solely at the instigation of the military authorities, never due to IG or Dr. BURGIN's initiative. If the military authorities issued orders for initiation or extension of certain productions, it was impossible for IG or BURGIN, insofar as he was at all involved, to refuse. The ruling power would have broken all resistance and asserted its will, which entailed great personal and material risks to the opponent. This was stated quite clearly by the witness KEMANN (cross examination, transcript page 5124, direct examination transcript page 5356).

Not even the chief of staff of the Military Economy Office, the witness HUENES, knew the armament plan and armament goal as a whole (transcript page 13409). According to what he saw, German armament was completely inadequate for a long war.

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and especially for a world war, such as the war against Poland could not fail to unleash (transcript page 13493).

As Bitterfeld/Wolfen supplied only a fraction of the total requirement of primary armament products, it was quite impossible for EVERGIN to form a picture of the scope of the armament project which might have led him to the conclusion that war was imminent, quite apart from the fact that - as technical manager - he was not, or only inadequately informed about sales and designation of turnover. Products which, perhaps with the exception of Losantin and arms decontaminators, constituted merely preliminary products, necessary for any armament (defense or offense) could not convey anything regarding the plans of the political and military authorities to EVERGIN. But the production of war material during the war was not declared criminal by the IMT (see Speer verdict), a view which the American Military Tribunal in Case X (against Krupp and others) adopted.

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4. Weakening of Germany's possible
enemies by international agreements.

Section 53 of the indictment reads: "Through its cartel arrangements, Farben retarded the production within the United States of certain strategic products including ... magnesium..". Due to the fact that they could not import any magnesium from the US, Great Britain and the rest of Europe became allegedly "completely dependent upon Germany for their magnesium. As a result, Great Britain was in a desperate situation with respect to magnesium at the outbreak of war." (Section 54). In part I, page 52 of the Trial Brief, the Prosecution already limits itself to the claim that the activity of IG "included retarding production and controlling the supply for military reasons of such strategic products as magnesium". To prove this, exhibits 999 to 1010 presented in Prosecution Document Book 43 were quoted by number only without any mention whatever as to what they were to prove.

The defendant BUEGIN had nothing whatever to do with the agreements concluded in the first half of the thirties, to which the Prosecution objects; BUEGIN himself (transcript page 8375) and Herman E. BROWN (Buegin-Exhibit 16, Buegin Doc. Book III) testify to this effect.

If the Prosecution should perhaps try to deduct from the Alig agreement of 1931 (Prosecution Exhibit 999, Doc. Book 43) that the magnesium production of the contemplated US corporation was restricted, it overlooks the fact that it was possible

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to establish not only one magnesium production firm but two such enterprises with an initial capacity of up to 4000 tons each per year, and that at that time 5000 tons per year, and even 4000, were greatly in excess of the expected requirements, especially as this was a new metal that was not yet used on a larger scale in the US (Pistor-Affidavit, Buegin-Exhibit 25, Buegin Document Book III, page 8 etc.). The Prosecution furthermore overlooks the fact that the jointly founded Alig company - later named Magnesium Development Company - was asked by the holders of IG stocks to grant, or authorize IG to grant, a production and fabrication license to the firms of du Pont de Nemours & Co., General Motors Corporation, Chrysler Corporation, Nash Motor Company and Ford Motor Company. With this clause the IG wanted to prevent Alcoa, America's largest producer of aluminium, from stunting the development of magnesium. Both provisions manifest the contracting parties' and especially the IG's wish, emphasized in paragraph 2 of the contract, to achieve the greatest possible development in the field of magnesium in the US. BOCE (Buegin-Exhibit 26, Buegin document Book III, page 46 etc.) gives a detailed explanation of the production control which was meant as a merely temporary measure. He points out that IG Bitterfeld, which at that time supplied the entire European market, had at the same time an exploitable capacity of only 1600 to 2000 tons. This is also confirmed by PISTOR. (Transcript page 11864.)

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The supplementary agreement to the Alig-agreement of 8 February 1933 (Prosecution Exhibit 1000, Doc. Book 43) makes no further mention of a restriction of the production capacity. This restriction thus became void (compare PISTER, BUEGIN-Exhibit 25, BAKEN, Buegin Exhibit 16, both in Doc. Book III; TRUMAN report, Buegin Exhibit 33, Doc. Book IV, page 38). The Alig-agreement was amended, since, for the time being, it proved impossible to produce magnesium to such an extent as to be able to compete with DOW (such in the above-mentioned Exhibit 26). On the whole the agreement of 8 February 1933 shows the disappointment about the failure of the Alig-agreement.

The license-agreement between MDC, DOW and Amt of 1 January 1934 (Prosecution Exhibit 1001, Prosecution Document book 43) is an agreement on mutual licensing of USA patents in the field of magnesium-processing, concluded without the IG's participation. In agreement with the IG (see PISTER in the above-mentioned BUEGIN-Exhibit 25) DOW was now able to use also the valuable processing patents of the IG. It is incomprehensible how this agreement is supposed to discredit the IG.

The agreement between IG and DOW of 7 September 1934 (Prosecution Exhibit 1003, Prosecution Doc. Book 43) does not show anything worth objecting to in the restriction of exports to Europe which it imposed on DOW. The distribution of the world markets and the expansion of the German magnesium business are in accordance with the natural and recognizable business interests of the IG, in view of the very considerable development expenses borne by IG for magnesium.

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Prosecution Exhibit 1004 has no evidence value whatsoever, for it furnishes no proof that an exporter in San Francisco had intended to ship magnesium to Europe. Of the following documents the only one based in any way on the agreement of 7 September 1934 restricting DCW's exports to Europe - is Prosecution Exhibit 1008, in which DCW according to the agreement declares that it is unable to supply Roumania with magnesium metal. On the other hand, in Prosecution Exhibits 1005 to 1007 and 1009, in each case the purchasermaking inquiries were given the name of selling agents to whom they could apply for the supply of DCW-magnesium.

It is quite evident that the agreement on the restriction of DCW exports to Europe was no longer in force in 1938 for, as is shown by appendix III to the report of the Senate committee under Harry S. TRUMAN, (Buegin Exhibit 33, loc. Book IV, page 68) the DCW sales to England increased considerably in 1938 and the sales to three other European countries must also be added. However, the sales of magnesium to Japan in 1938, which are dealt with in detail in the TRUMAN report (compare the Buegin Exhibit 33 already mentioned, page 41) are exceptionally large. There is another considerable increase in the sales to Europe in 1939.

Since the charges made here against the IG apply far more to the DCW, which agreed to such arrangements for the sake of its own business interests, judgment was pronounced in 1942 by the district court of the Southern district of New York and referred to in the TRUMAN report, page 8 (compare the Buegin exhibit already mentioned, page 42).

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The reasons, however, on which the judgement was based have been superseded by the examinations of the Truman committee. The DOJ and ALCCA firms, sentenced at that time, emphasized that the fact that they agreed to the judgement does not imply their admission of guilt (see also report, Buegin Exhibit 33, Doc. Book IV, page 43). On account of the war the IG was unable to voice its opinion with regard to the indictment.

The charges made now that the IG systematically weakened the foreign, and especially the British armament potential are more than far-fetched. Ever since world war I foreign countries have taken an interest in magnesium metal, in some cases independently and in others depending on the IG, especially France, Italy, Switzerland and England. The slow development of the magnesium business, despite all efforts on the part of the IG (compare BUCH-affidavit, Buegin exhibit 26, Buegin Doc. Book III, page 46 etc.) which disappointed PISTON and his colleagues very much, is - according to Buegin's opinion (transcript page 8376) - due to the all-powerful position of aluminium and its low price in the USA, and due to the fact that the saving of weight in the construction of vehicles was of minor importance in view of the good roads and the cheap fuel prices in the USA. After having fully developed its processing method, the IG made the results of its experience available by concluding many license-agreements with foreign countries, especially with France, Italy and England (compare also Buegin-Exhibit 19-21, Doc. Book III, page 56 etc.). For assisting foreign manufacturers the IG distributed its original specialized literature printed in several languages. Wherever it supplied metal or granted licenses, it included also its "know-how". In short, it was anxious to promote the metal

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with all means available" (Buegin transcript page 8377). For this purpose it maintained a large research institute at Bitterfeld with first-rate experts, to which foreigners paid frequent visits. A close and loyal professional relationship existed between the foreign experts, especially the Americans, and the staff at Bitterfeld. Details concerning the supply of experience are given by the witnesses REEBER (Buegin exhibit 42, Doc. Book III pages 76 etc. and transcript pages 8559 etc.), RUCH (Buegin Exhibit 26, Doc. Book III, page 52 etc.) and PISTOR (Buegin Exhibit 25, Doc. Book III, pages 11 etc.), as well as Buegin himself (transcript page 8379). BOTHMANN (Buegin Exhibit 22, Doc. Book III, page 88), and L'ORACE (Buegin Exhibit 23, Doc. Book III, page 90) confirm that Herr BAKKEN paid several visits to the Alcoa, on the occasion of which he was shown not only all important production shops in Bitterfeld but the whole Alcoa plant as well, although this plant was working partly for armament production and certain regulations regarding secrecy were in force. BAKKEN himself admits (Buegin Exhibit 16, Doc. Book III, page 99) that the IG fulfilled its obligations with regard to the supply of "know-how" up to the outbreak of the war; he describes his own visits and those of his colleagues in Germany up to 1939 and the frank way in which information was given to him. It is significant that he makes no mention at all of the IG's having restricted the American production of magnesium in any way. There is not a word about it in the report of the senate-committee by TRUMAN either. The letter from IG Bitterfeld to the OKW dated 12 January 1940 (Buegin-Exhibit 24, Doc. Book 24, Doc. Book III, page 95) proves that the IG - despite the disappointments it experienced in its American transactions - adhered to its plan even in the face of the Wehrmacht during the war,

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to fulfil its contract obligations towards its partners in the USA. As is apparent from the minutes of the meeting of the Vorstand on 25 April 1941 (Prosecution Exhibit 1053, Doc. Book 80, page 75) the exchange of experiences was continued until it was rendered practically impossible by an order of the President of the USA dated 15 April 1941.

Without producing any proof, the Prosecution finally alleges that the magnesium imported from the USA into Germany was hoarded by IG for the preparations for war. This is not correct; for the magnesium bought from LOF was alloyed in IG plants and afterwards re-shipped to England (Burgin, tr. page 8576).

One of the most striking proofs that the IG made its experience available unreservedly and to its full extent is the fact that the magnesium plant of the IGL was constructed at Clifton Junction, in which experts of the IG worked for years, for instance the witnesses WEBER (Burgin Exh. 42, Burgin Doc. Book III, page 79 etc. and testimony tr. page 8561), FRIEDRICH (Burgin Exh. 10, Doc. Book III, page 38) and ANDREAE (Burgin Exh. 18, Doc. Book III, page 93). It is only natural that the IG required the permission of the Reich War Minister for erecting the English magnesium plant - as is apparent from Pros. Exh. 1010, Book 43 - since American industry also required the approval of the War Department in Washington for granting to the IG the license for tetramethyl of lead (Pros. Exh. 1668). The Prosecution Exh. 1010, a letter from the IG to the chief of the Military Economy Office THUMS dated 29 October 1935, confirms, moreover

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the above explanations concerning the way in which experience was made available by describing in detail the relations between the IG and other countries and its endeavors to increase the utilization of magnesium. The explanation given by the Prosecution (tr. p. 2418) in introducing this document (Exh. No. 1010), is a misrepresentation of the facts. It is superfluous to go into details as to the allegations made on this occasion by the Prosecution without any proof whatsoever.

As to the valuable assistance rendered by IG to England in magnesium matters, explicit details are given in the various articles written by Major L.A. (Buegin Exhibits 27 to 29, Buegin Doc. Book IV, page 1 etc.), furthermore in the ECL-Magazine of Easter 1939 (Buegin Exh. 30, Doc. Book IV, page 18) and the article in "Engineering" of 1944 (Buegin Exh. 31, Doc. Book IV, page 22), and finally also the affidavit by BML in which he states that during the many years of cooperation up to the outbreak of the war in 1939 the IG supplied its technical information to the latter and in accordance with agreement (Buegin Exh. 34, Buegin Doc. Book VII, page 14). In the article of 1945 (compare the above-mentioned Buegin-Exhibit 28) BML explains that up to the completion of the construction at Clifton Junction sponsored by the IG, the English magnesium industry bought magnesium for the English air force from German "shadow factories" - i.e. factories not subject to any export restrictions - which the Air Force used to increase its armament and then returned "literally as coals of fire on German heads". However, none of these English statements, which originate in various years, ever speak of any

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restriction of English imports of magnesium or of magnesium production by any manipulations of the IG whatsoever. Not even the war psychosis induced the Englishmen to make such a statement which might serve as supporting evidence for the accusations of the Prosecution.

The IG acted just as loyally towards the USA as it did towards England. In the face of the clear proofs given above, the documents submitted by the Prosecution, Exhibits 1018 and 1019 (Doc. Book 43) may be described as taking only a one-sided view of the matter, for they simply consider it entirely from the viewpoint of combatting the cartels and thus give it a distorted appearance. As regards Pres. Exh. 1018, the detailed report of TRUMAN's special committee for magnesium (Burgin Exh. 33, Doc. Book IV, page 32 etc.) is undoubtedly more objective and correct. It gives the clearest possible proof of the reserve exercised by the USA armed forces in particular, and the deficiencies experienced for years in enlarging the sphere of magnesium in the USA. Thus, to sum up, just the reverse of the allegations of the Prosecution has been proved: The IG failed on the whole to conquer the USA market up to the beginning of the war, despite its tenacious and honest efforts. There can be no question of any action on the part of the IG - or still less of the defendant BURGIN, who would have been responsible for it only since 1938 - having delayed or hampered the armament of USA or Great Britain or any other country in the field of magnesium.

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5. Espionage.

National Socialist Propaganda and "Fifth Column Activity", as allegedly engaged in by IG, and especially by its commercial representatives, are not charged against BUEGIN. In the Trial Brief, part I page 66, the Prosecution merely mentions under "Espionage Activities", the reports to the Reich Air Ministry on the position in and production capacity of certain aluminum factories in England, and refers in this connection to the activity of two of BUEGIN's assistants.

BUEGIN is not incriminated by this charge. According to BANNERT's affidavit (Prosecution Exh. 850, volume 47 page 5), Wehrmacht authorities requested the Economic Department during the war to give a description of the magnesium factory Clifton Junction in England, for the purpose of an air-raid. The Economic Department passed on the advice of "a gentleman from Bitterfeld". Thus developed the correspondence between Herr von der BEY and General LOEB, and between ZIEGLER and FISCHER of November 1939 (Prosecution Exh. 884, Doc. Book 48), and the correspondence between von HEIDER and von der BEY of September 1942 (Prosecution Exh. 942, Doc. Book 49). None of the letters shows that the writers, insofar as they participated in the construction and opening of the British factory Clifton Junction, engaged in espionage there or at the other British factories mentioned, or that they had orders to do so, or that they ever relayed such information to Wehrmacht authorities.

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before the war. According to BUEGIN's testimony, (transcript page 8384), confirmed by von der BEY, (BUEGIN Exh. 34 and 35, Document Book I page 31 etc.), BUEGIN had nothing to do with von der BEY's letter to General LOEB. In fact, von der BEY had military orders to conceal the fact of this correspondence from him.

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Count II Spoliation and Plunder.

The Prosecution connects BUEGIN with a plan of the German Government to plunder the areas occupied by Germany and to utilize them for the German war potential. However, they failed to bring evidence showing that BUEGIN knew, or even had the opportunity of knowing of such plans, insofar as they existed at all. BUEGIN never worked in the occupied zones. Once he made a trip to Poland and in 1941 he became supervisory council of a Norwegian company, in which IG. invested great monetary and material values. In general, he, a technical expert, never participated in financial negotiations or agreements with foreign countries. These considerations alone show that the plunder-count is unfounded in BUEGIN's case, not to mention the extremely complicated legal problems connected with the spoliation and plunder charge levelled against a private industrialist who was merely an employee.

BUEGIN is accused of having participated in plunder in the following countries:

- 1) Poland
- 2) Russia
- 3) Norway.

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1. Poland.

a) The Prosecution asserts (Trial Brief part II page 17) that "from the outset, Forben felt that, as a matter of course, the entire Polish industry was to be subjugated to Germany in her aggressive wars - without any regards to the needs of the Polish population." It considers the letter of the defendant URSTER to the defendant BUERGIN (Prosecution Exh. 1134, Book 55) as most revealing in this connection. This letter, dated 23 November 1939, contains a copy of URSTER's notes on a trip through the then German occupied Poland in October 1939 and a reference to BUERGIN's account of a trip, which would interest URSTER. BUERGIN's reply to URSTER dated 24 November 1939, is presented as Prosecution Exh. 1976, together with a copy of BUERGIN's notes on a trip through Poland which he made in October 1939, and which, according to the geographical location of the places described in the letter and in BUERGIN's cross examination (transcript page 8464), led him primarily through Southern Poland (Galicia). The "Travel notes" are a letter to Oberregierungsrat ENGEROFF in Berlin, in whose company BUERGIN made this trip. BUERGIN testified (transcript page 8411) and confirmed in the cross examination, (transcript page 8464) that a government agency and not IG requested him to accompany Dr. ENGEROFF on his inspection trip, as chemical expert. Consequently he could not engage in activities within the spoliation scheme such as the Prosecution ascribes to IG. in Poland. If BUERGIN, at the end of the travel notes (Prosecution Exh. 1967) remarks that certain apparatus "will be of interest to the German industry", this wording

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may have been chosen with a view to an aim pursued by the government official, but not in the interests of IG., because there was no IG order to this effect. Prosecution Exhibit 1966 says nothing to the contrary. The note which, for one reason or other, the Directorate Chemicals wrote for Haefliger on 23 October 1939, was sent to BUEGIN only because he happened to have a telephone conversation with Haefliger on 24 October and Haefliger wanted him to take this note along with him on his trip for reference purposes. Haefliger confirms this in his direct examination (transcript page 9179). The attached itinerary for a "third Poland trip" is not the plan for BUEGIN's trip, as the dates and places mentioned show. Prosecution Exhibit 1210 confirms that no plunder project was mentioned, because BUEGIN and WURSTER reported only "on the technical state and the economic position of the plants inspected" in the Vorstand meeting of 8 November 1939. BUEGIN's trip had nothing whatever to do with the Boruta case; for WURSTER, in his examination (transcript page 11125), has made it clear that IG. personnel was appointed as trustees for Boruta already prior to the two trips and the Vorstand meeting. The Prosecution brought no evidence whatever showing any practical consequences of BUEGIN's Poland trip. It was purely an inspection trip, as testified also by the witness POHLID in the case WURSTER (Exhibit WURSTER 82, Doc. Book WURSTER II page 79).

b) As proof of a further alleged case of plunder the Prosecution submitted invoices of IG Bitterfeld for apparatus from Blizyn (Poland).

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They claim to have "shown that, in the case of the Blizyn plant, Farben just took away the equipment and then billed itself" (Trial Brief II page 18). Prosecution Exhibit 1168, Doc. Book 56, which, as the Prosecution claims, established proof of this, in fact achieves no more than to show that IG Bitterfeld received apparatus from a Blizyn plant through the Army High Command, that it forwarded to the Army High Command an appraisal for this apparatus amounting to RM 83,475.—, and that it made out 3 invoices to the same total amount, giving the Army High Command as payee and the 3 individual plants which received the apparatus as debtors. All further circumstances of the transaction remained unknown. According to BUERGIN's testimony (transcript page 8411) a certain authority requested his works manager in Jken, Dr. BAUER, to take this apparatus over from the Army High Command. The witness FRANZ, former business manager in Bitterfeld, who is the author of the letter Prosecution Exh. 1168, states (Exh. BUERGIN 63, Doc. Book VII page 21), that to his knowledge IG neither desired nor encouraged the transfer of the apparatus; why it was just the Army High Command, who offered the apparatus, FRANZ is unable to say. The fact that the invoices were made out on IG's own forms is to be explained by bookkeeping requirements: namely distribution of the estimated invoice amount among the 3 works, for booking before the end of the fiscal year. The invoices have merely intra-factory significance. According to FRANZ's testimony it is beyond doubt that IG paid up its debt to the Army High Command. It remains entirely obscure, whether the equipment became available to the Army High Command by rightful or illegal means;

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In any case neither BUEGIN nor any one of his delegates took the machines from Poland or requisitioned them.

c) BUEGIN, according to his testimony (transcript page 8412) had nothing to do with Polish chemical enterprises, either as a result of his journey or later on. No proof has been furnished of any act, which might be regarded as spoliation in Poland on the part of BUEGIN.

2. Russia and various other
territories in connection therewith

The charges made in the trial-brief by the Prosecution (part II, page 12 and following) that IG Farben allegedly plundered the Russian economy, in particular that they sent experts to Russia, became shareholders of Eastern companies, appointed members to the Vorstand of such companies and that they fought for the buyer's option on Russian factories, do not apply to the defendant BUEGIN. The Prosecution does not assert that the IG removed machines or products from Russian territories. We may leave the question undecided, whether BUEGIN received and read the situation report by DE HAAS, which the WIPG in Berlin had sent to all members of the Vorstand (Prosecution Exh. 1175, Document Book 63), and to which the Prosecution objected especially. He in no way identified himself with it nor was he involved in any actions, which may be interpreted as spoliation. The Prosecution-witness RAUEGER, who sent out this report, admitted during his cross-examination (transcript page 4702) that the report is a summary of government decrees, and

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represents planned government measures, that this report was intended for the information of the members of the Vorstand concerning the situation and that the government measures in no way met with the approval of the members of the Vorstand. From the report itself it becomes evident that the IG did not participate at all in the so-called "Erfassungs- und Handelsgesellschaften" (procurement- and trading companies) (Prosecution Exh. 1175, page 2) but only in one "Betriebsgesellschaft" (production company) and in 3 "Betreuungsgesellschaften" (guardianship companies). These Betreuungsgesellschaften, having only a small capital at their disposal, were to help and advise the trustees appointed at the works, and to supply material needed for the reconstruction of factories which had been destroyed by the Russians on their retreat; but they did not exercise any influence on the plant management (affidavit HOFFMANN, Oester-Exh. 46, Oester Doc. Book III).

The only company in the East in the tasks of which BUEGIN as a specialist might have been interested, was the Soda- und Aetzalkalien - Fab G.m.b.H., which, according to de KAS' report (Prosecution Exh. 1175) and the above mentioned affidavit by HOFFMANN, was a "Betreuungsgesellschaft" in which the IG participated with 18,67 % = RM 5.000.--. BUEGIN's only proven connection with this company was the fact that an excerpt from the correspondence on the foundation of the company was sent to him as chairman of the Chlor-Wko (Prosecution-Exh. 1563, volume 64) and that he attended a meeting of the Chlor-Wko on 23 September 1941 (Prosecution Exh. 390, Volume 15), when the witness HEIDER reported on the plans for the company. On the basis of documents, Von HEIDER gave a detailed description

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in his affidavit (Buekgin exhibit 38, Doc. Book I, page 36) concerning the foundation of the company, its very modest business sphere comprising the guardianship of 2 Russian soda-factories and its liquidation in May 1944. He testified on oath that the IG neither acquired the trusteeship nor the ownership of these 2 soda-factories, that they did not send any workers to this factory, that they did not receive any machines or goods from them, nor made any profits, but that they lost almost all the capital which they had invested in this G.m.b.H..

the
At/above-mentioned meeting of the Chlor-Werke on 23 September 1941 at which BUEKGIN was chairman (Prosecution Exh. 396) von HEIDER reported furthermore: "As much chlorine as possible must be brought in from the occupied country.... A surcharge on the price will have to be paid for this chlorine. In this connection, BUEKGIN stated during his examination (transcript page 8412) that this was a regular purchase of chlorine and that the firms in the occupied territories - this does not mean Russia, but Eastern Europe - had to be strongly supported with raw material by the IG so as to be able to operate at all.

The defendant BUEKGIN is not responsible for the opinion expressed in the correspondence between HAEFLIGER and ZIEGLER, dated August 1941 (Prosecution Exh. 1996 to 1998), as ZIEGLER, who is involved here, was not his subordinate, but being the head of the Sales Department for electron metal, and despite the fact that he was located in Bitterfeld, he (ZIEGLER) received his instructions solely from the sales company for chemicals in Frankfurt (Main), which was his superior agency. If ZIEGLER sent BUEKGIN a copy of his letter containing suggestions on Russian magnesium-factories for semi-finished products - the adoption of these suggestions has not been proved - then this was an act of courtesy

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toward the local factory manager, whom he wanted to inform of his personal opinion; see affidavit PRANZ, BUEGIN exhibit 95, Buegin Doc. Book VIII, page 3. As ZIEGLER was not subordinated to BUEGIN, the latter is not incriminated by Prosecution Exhibit 1959 either, which is a letter written by BOLLMANN, Berlin, to ZIEGLER in Bitterfeld (compare also in this connection affidavit PRANZ, Buegin Ex^h. 95, Doc. Book VIII, page 4).

Thus all documents mentioned before are insufficient proof to justify the charges of spoliation.

3. Norway

The political economy department of the IG in Berlin (WIFO) on 8 May and 15 September 1941 sent two circulars to all members of the Vorstand (Prosecution Exhibit 1191, vol. 65) for information and also requested their opinion on it. BUEGIN, as far as he can remember, did not express his opinion on these circulars and did not, under any circumstances suggest them or assist in their preparation (transcript page 8403). No proof of this can be furnished. The suggestions, which deal in detail with future customs regulations and trade agreements, are of such a commercial nature and are based on special material collected by the WIFO, so that the participation of a member of the Vorstand, who is an expert in chemistry, is rendered most unlikely. It is interesting for BUEGIN's defense, that already in these suggestions the enormous increase of the national income of Norway due to the large-scale program for light metals is pointed out (Prosecution Doc. Book 35, page 51).

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BUEGIN is not responsible either for plans concerning industrial projects in Norway - submitted in several Prosecution documents, which were drawn up and constantly changed by KOPPENBERG, who was appointed by the government for the development of light metals.

The witness MILCH testified (transcript p. 8543) that KOPPENBERG, upon GOERING's instructions, enlisted the aid of industry for his plans, and that he, MILCH, had technical, economic and political misgivings concerning these plans. KOPPENBERG had requested BUEGIN's assistant MOSCHER, the expert in light metals, for Norway. From MOSCHER's note, dated 19 October 1940 (Prosecution exhibit 585, vol. 65) it becomes evident that plans for the development of light metals were discussed solely with KOPPENBERG and NEUKIRCH in Berlin; BUEGIN did not participate. BUEGIN did co-sign the letter written by MOSCHER on 23 October 1940, while the letter was still in Bitterfeld (Prosecution exhibit 586, vol. 65); this letter expressed MOSCHER's opinion after his conference with KOPPENBERG in Berlin, and describes to 3 members of the Vorstand, the advantages of a participation of the IG in the Norwegian development plans "not only for purposes of war, but especially for the peace-time development" and clearly also refers to the necessity for participation of Norsk Hydro. Apart from the fact that RM 300,000,000.-- were to be invested in the building project which had been planned at the time - therefore there can be no question of spoliation - these early plans, which were based on GOERING's and KOPPENBERG's instructions, were soon rendered obsolete by other instructions of RLM. See BUEGIN's testimony during his direct examination (transcript p. 8406) and cross-examination (transcript p. 8467), also compare affidavit MOSCHER, Ilgenr Exhibit 196, Ilgenr Doc. Book XII A, page 3 and following.

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The meeting of the Vorstand on 5 February 1941 (Prosecution exhibit 1193, vol. 65) shows that, although all members of the Vorstand were present, it was not BUERGIN, but MOSCHEL - the man appointed by Koppenberg - who reported on the magnesium plant planned jointly by IG and the NORSK HYDRO. A short time before the company for the construction of the magnesium plant was founded, Koppenberg had asked for further extensions - for aluminum, alumina and cryolite - thereby considerably changing the plan of the joint IG-NORSK HYDRO foundation. According to BUERGIN's statement, (transcript page 8406), the three additional manufacturing plans were forced upon IG and Norsk Hydro, by Koppenberg, who had been given full powers by GOERING. This is confirmed by Prosecution Exh. 587, vol. 65 and HAEFLIGER's statement (transcript page 9185). From Mayor Goellin's note (Prosec. Exh. 1194, vol. 65) it is evident that IG and Norsk Hydro were forced by order of the Reich to accept a third partner, namely the Nordde, the company of the RLM (Reich Air Ministry) and that the contracts with Norsk Hydro had to be altered. According to Mayor Goellin's file note, BUERGIN did not take part in the planned conference with the Norsk Hydro executives. (Transcript page 8406). The minutes, dated 27 February 1941, concerning the decisive conference of 6 February 1941 in the Reich Air Ministry (Prosec. Exh. 1195, vol. 65) in which BUERGIN did not take part either, again shows the origin of the "Reich order" which thwarted IG's and Norsk Hydro's magnesium plans and provided for RLM's strong influence in the new company through Nordde. IG participated with reluctance in the enlarged plans, which is confirmed by its hesitations with respect to the alumina factory, as mentioned on page 3 of

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the aforementioned document, HAEFLIGER (cross examination transcript page 9214), witness MILCH (transcript page 8544) and witness Mayor-Negelin (transcript page 3096) state that IG, in spite of MOSCHEL's suggestion of 23 October 1940, was not interested in a participation in Norway's aluminum production, since IG's production quota was only small according to domestic German agreements which were binding for IG. IG was interested only in the Hareen magnesium factory which it intended to build together with its long-standing business partner Norsk Hydro and at the suggestion of the latter's Director General LUHER. It was possible for IG, (cf. Haeffliger, transcript page 9438 and page 9181); in this way/on the secure basis of Norwegian hydraulic power, to meet an order given by RHM in the fall of 1939 for the enlargement of the magnesium capacity, after the originally planned Gersthofen (Bavaria) project had proved a failure owing to the cost of the hydraulic power being too high. This was also confirmed by the witness MILCH (tr. p. 8544) and HAEFLIGER (tr. p. 9182) and MOSCHEL (Ilzner Exh. 196, Doc. Book XLIIA).

Early in May 1941 the Nordisk Lettmetall in Oslo was founded, with IG., Norsk Hydro and Nordag each having a share of one third. Its legal form was quite in keeping with Norwegian law; in order to conform to Norwegian law, the handling of labor questions was likewise left entirely to Norsk Hydro, which also built a factory at Hareen (MOSCHEL in the above mentioned Ilzner Exh. 196). BUERGIN was not present when the contract was drawn up nor when the foundation took place, nor was he active on the working committee of the Aufsichtsrat. He only became an ordinary member of the Aufsichtsrat, in which capacity

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he took part in 2 or 3 meetings of the Aufsichtsrat (statement BUERGIN, (transcript page 8409), during which he occasionally talking to Dr. MOSCHEL. "But this factory's real an original specialist was Herr MOSCHEL himself", BUERGIN has stated in the cross examination (transcript page 8467); and this is the reason why BUERGIN, who was no light-metal specialist, subsequently hardly figured at all in the Nordisk Lötmetall. MOSCHEL used some of his specialists, who were released from Bitterfeld, for the construction of the Horoon magnesium factory (Prosecution Exh. 1208, vol. 65). The know-how was supplied by Bitterfeld (statement ter Meer, transcript page 7176).

Above all things, BUERGIN had nothing to do with the commercial side, i.e. with the financing of the Lötmetall projects and, in this connection with the increase of Norsk Hydro's capital stock. This is confirmed by witness Kjerfve (transcript page 3101). KERSTEN's file notes on Norsk Hydro's increase of capital stock in March 1941 (Prosecution Exh. 1201 and 1204, vol. 65), although forwarded to BUERGIN for his information, had nothing to do with his chemical work; and therefore, even if he should have read the notes, took no part in this transaction. BUERGIN states with respect to IG's letter to BIL, dated 22 May 1941 (Pros. Exh. 1196, vol. 65) - which does not bear any signature or place of origin - (transcript page 8407)/Nordisk Lötmetall's intended licence fee for magnesium supplies was modest.

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Likewise the allowance for drawings, methods and experience to be passed on by IG. to Lettmetal, and for advice concerning the establishment of the cryolite and chlorine plant (Pres. Exh. 1198 vol. 65) was in keeping with internationally customary fees and was modest in view of the size of the project (Burgin, transcript page 8408).

There was no production during the war in the works built with IG's assistance, because considerable destruction had been caused by an allied air attack at Heroson in 1943 and the competent authority (Armament Minister SPEER) prevented further construction. The minutes of the Vorstand meeting of 2 September 1943 (Pres. Exh. 1200, vol. 65) show the objections which were raised against this shut-down in view of the high investments, "the light metal program in Scandinavia having been planned entirely without heeding IG's advice or opinion". The greater part of machinery, instruments etc. for Nordisk Lettmetal had been imported from Germany (MOSCHEL, ILGNER Exh. 196; FRANK, ILGNER Exh. 197, both in ILGNER Doc. Book III A.); Mayor Hagelin, BUERGIN Exh. 37, Doc. Book I page 34). Their value was considerably higher than IG's investments. The defendant ILGNER's defence deals in detail with the high German investments, the financing and the construction officially ordered after the aforementioned air attack, and the return of machinery.

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BUERGIN could only state from his own experience, that in Norway very valuable works were built mainly with German capital, (Transcript page 8407), and that only a very small part of the factory equipment originally supplied by Germany was returned after construction (BUERGIN, cross examination transcript page 8469) whilst the greater part was left in Norway (cf. the aforementioned affidavits MOSCHEL and FRANZ, ILGER Exh. 169 and 197, ILGER Doc. Book XII 4). Thanks to the construction of the Lottmetall factory, mainly financed by German capital - Norway is to-day in the fortunate position of already having the chlorine works in production and of being able to start work at the magnesium factory in the near future. (BUERGIN, cross examination transcript page 8469). In the long run the Norsk Hydro did not suffer any loss, but attained a considerable increase in its value (BUERGIN transcript page 8407).

BUERGIN was only slightly connected with the Norwegian business. He cannot possibly have incurred guilt in this connection because - apart from other possible reasons - the IG did not carry out any spoliation at all in Norway.

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Count III of the Indictment Slave Labor and
Mass Murder.

At the outbreak of the war BUEGIN was plant manager in the sense of the German Charter of Labor for the Bitterfeld plants and for the dyestuff factory Wolfen; not, however, for Hoeberitz, Aken, Stassfurt etc. A joint social welfare department for the works combines Central Germany and Berlin - in Aken - subordinated to Dr. GAJEWSKI as senior member of the Vorstand - attended to the joint social matters of both works combines. At first it was directed by the witness JOHNS up to 1942 and afterwards by Dr. PERSCHMANN. There was a local personnel section in each plant of the works combine (witness JOHNS, record pages 8481-83; TSCHERTER, BUEGIN Exhibit 43, Document Book V page 1; WEGNER, BUEGIN Exhibit 76, Document Book VI, page 51), which was subordinated to this department. The social department Wolfen received its general directives ^{directly} partly from state authorities of the labor administration and offices of the German Labor Front and the Bertrams Office of the chief plants manager of the I.G., Dr. SCHNEIDER.

BUEGIN took part in conferences of the I.G. plant managers and occasionally also in

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meetings of the Beirat (advisory council) of the enterprise. On an average both discussion groups met two or three times a year. The character and the tasks of both these discussion groups are depicted by SCHNEIDER (transcript pages 7394 etc.) They dealt with social welfare policy in general - as far as it could be established jointly for all the plants - however, they were not concerned with labor allocation, i.e. the procurement of laborers for the individual plants and their employment in each plant, nor with the labor legislation of the state.

A. Foreign workers in Bitterfeld and Wolfen-Flarben.

During the war Bitterfeld and Wolfen-Flarben employed foreign workers and prisoners of war, but not concentration camp inmates. In his cross examination the witness for the Prosecution POHL (records page 4326) did not maintain the allegation that he saw concentration camp inmates employed at Wolfen and Bitterfeld. Defendant SCHNEIDER corrected his assertion in regard to Bitterfeld (records page 7410). Also the witness STEUSS (Prosecution Exhibit 1318, Book 68) - while explaining the chart made for the TRA (Technical Committee) which includes inmates of concentration camps in other groups of workers, confirmed expressly that inmates of concentration camps were not working in Bitterfeld and Wolfen-Flarben (transcript page 4084). Finally witness LANG described the negotiations with the SS, on which the telegram

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by PISTER (Prosecution Exhibit 1397, Book 70) was based, and emphasized that despite the offer of the SS there were never any inmates of concentration camps in Wolfen-Parben or Bitterfeld (records page 8583). The requisition of 200 prisoners made by Herr PERSCHMANN, chief of the social welfare department, on the basis of an offer made by the GBChe (General Plenipotentiary for Chemistry) - which is referred to in the Prosecution Exhibit 2240, volume 94 - did not result in the employment of such prisoners in Bitterfeld and Wolfen-Parben. From the document it is not apparent whether the request was possibly made on behalf of the Filmfabrik Wolfen which was also subordinated to the social welfare department of Dr. PERSCHMANN.

1. Origin and equipment of the labor camps.

In Bitterfeld labor camps existed already before the war. Due to the extensive industrialization of the district, building laborers first came to Bitterfeld from various parts of Germany (witness JOERSS, transcript page 8484). Since 1937 this necessitated the construction of camps in which at first Reich Germans and then - still before the war - ethnic Germans from Sudetenland and Slovakia were housed (BURGIN, transcript page 8415). The various contractors working in Bitterfeld formed an association "Camp Association Marie" which took over the management of the camps and of which the witness Joeres was president up to 1942, when he left. The association was dissolved at the end of 1942 and the maintenance of the camps was taken care of by the I.G.

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The I.G. endeavored to make models out of the camps as soon as it had gained sufficient influence over them, i.e. even before the beginning of the war. In addition to the 12 photos identified by the witness JOERSS (BUERGIN Exhibit 49, BUERGIN Document Book V, page 52) this is proved by convincing statements in the form of the affidavits by the architects ANSORGE and ELSNER (BUERGIN Exhibit 87, BUERGIN Document Book VII, page 24), by FARRER and NEBELUNG (BUERGIN Exhibits 52 and 51, BUERGIN Document Book V, page 57 etc.), furthermore the statement by the witness JOERSS (transcript page 8512) and the affidavit by SOIRON (KRAUCH Exhibit 47, KRAUCH Document Book III, page 7) who calls the entire construction of the Bitterfeld camps "sensational" in the good sense of the word. In order to make life as pleasant as possible for their foreign workers, the I.G. went to considerably greater expense for their comfortable special huts than was usually the case. Information on the various parts of the camp as well as on the number of beds available and occupied on 1 August 1943 is given in BUERGIN Exhibit 50, BUERGIN Document Book V, page 55. In the above-mentioned BUERGIN Exhibit 53 FARRER describes how delighted the Slovaks were with the comfortable camp when they moved in.

2. Voluntary and conscripted workers.

Approximately in autumn 1940 the first foreign workers of various nationalities arrived from France (BUERGIN transcript page 8417), and later on members of numerous European nations.

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BUEGIN definitely recollects that there were very many voluntary workers among them (transcript page 8430). Also the witness EHR-
LICH (BUEGIN Exhibit 98, BUEGIN Document Book VIII, page 11) who considers conditions in a very critical way, declares that approximately up to 1942 the foreign workers had all come voluntarily, individually or in teams of "workers on loan" released by foreign contractors for setting-up machinery. Even Dr. WEISS, a special expert on questions of labor allocation, emphasizes (transcript page 7634) that it was only on the arrival of Eastern workers in spring 1942 that it became known that the basis of voluntary enlistment had been given up i.e. after SAUCKEL - who was sentenced by the Nuremberg IMT - had been appointed Plenipotentiary General for Labor Allocation (compare also BUEGIN transcript page 8430).

The foreign workers were not desired by the I.G. At first it seemed inconceivable that foreigners should be employed in German chemical plants. It can be clearly understood why BUEGIN and his people took the greatest pains to retain German workers for the plants if possible, even during the war. However, they had no influence on the allocation of workers and, in order to achieve the production targets assigned to the factories during the war, had to accept the workers allocated to them by the labor authorities (statement BUEGIN, transcript page 8431 and JOERSS, transcript page 8515, also TSCHERTER, BUEGIN Exhibit 43, BUEGIN Document Book V, page 1).

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The fact that, during the war, a plant manager was unable to refuse to handle the production which the government ordered and that finally he was in fact forced to accept the workers assigned to him, has repeatedly been proved beyond any doubt in this trial. (f. i. witness STOTTFANG Transcript p. 3739; WEISS, Transcript p. 7636; and MILCH Transcript p. 5337). The force of the misgivings - apart from other obvious reasons - which were expressed on the part of the counter intelligence regarding the employment of foreigners, is shown in prosecution Exhibit 1902 and 1903. It is only natural, that the foreign workers were by no means always the best elements; this is expressly confirmed by the witness WEISS (Transcript page 7645) and by the former camp-leader Nebelung in Buergin Exh. 51, Buergin-Doc. book V, p. 60. For all these reasons, the German entrepreneurs would much have preferred not to employ any foreign workers, if they had not been forced to do so by the drastic measures taken by the German government. The prosecution for the purpose of refuting this motion of the defense, offered Prosecution Exh. 2173 (Doc. book 92) in the rebuttal; this a circular by I.G. Bitterfeld, dated 5 August 1942, which states that Dutch workers may be re-conscripted after expiration of their contract. This reference, however, is not in accordance with any wish, or intention of the IG, or with any procedure carried out by the I.G., let alone by Buergin.

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In this document we are concerned with the publication of official information or decrees, which were conveyed to the I.G. - probably to the social welfare department - for this purpose, and it has not been proved in any way, that action was taken according to it. Buergin in any case does not believe so. (Transcript p. 14316). He himself, considering his well-known human attitude would never have acted accordingly. Neither are Buergin's human behaviour and attitude contradicted by prosecution exhibit 1964, which is a letter dated July 1943 bearing a handwritten marginal note by Buergin, reading: "Private agreement with slave-dealer". With this sarcastic and altogether critical remark Buergin referred to the building and assembly plants in France, which placed groups of recruited workers at the disposal of the I.G. Bitterfeld. (Transcript 8471). But it is precisely these labourers who were undoubtedly voluntary workers; for the assembly plants in France had no means of coercion at their disposal.

It becomes clear and is also particularly evident from the submission of evidence of the defendant Schneider, that the living conditions of foreign workers in Germany partly improved and partly deteriorated during the war. Whilst on the one hand the government orders - which were still influenced by the racial ideology of National Socialism - especially in relation to "Eastern Workers" - gradually introduced more improvements in the working and living conditions, the shortage of food and clothing, on the other hand, and finally the war - events themselves, which led to a curtailment of leave,

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and the aerial warfare, fundamentally changed the entire living conditions, including those of the German people and had a deteriorating influence on the position of the workers. (compare affidavit Ehrlich, Buegin Exhibit 98, Buegin Doc. book VIII, p. 11). Nevertheless the affidavits of foreign workers, who were employed in Bitterfeld during the war and remember this period without any feeling of bitterness (Buegin Exh. 70, 71, and 72, Doc. book VI, Buegin Exhibit 96 and 97, Document book VIII), as well as the attitude of the garrison troops who moved into Bitterfeld (Buegin - Exh. 40 and 41, Doc. book VI), bear witness, that the I.G. made every possible effort to treat the foreign workers well, and that these efforts met with success. The fact that Frenchmen in particular, and French married couples, desired to work in Bitterfeld, which had become known as a favorable working place, is proved by the incident at the Gare du Nord in Paris as related by JOERSS. (Transcript p. 8516).

2. Recruitment and Labor contract.

Against the 5 favorable testimonies given by foreign labourers on working and camp conditions in Bitterfeld, there is

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only the testimony of the Frenchman Balandier, who brings up onerously and obviously exaggerated charges against the administration in Bitterfeld (Prosecution Exhibit 1398, volume 70 and the testimony Transcript p. 7925 and following) and is very anxious not to show appreciation for the favourable points.

Allegedly 2 German policemen appeared in his Paris apartment, in order to remove him to Germany. (Transcript p. 7933) However, he did not see them himself, as he was absent at the time of their visit. The policemen apparently did not repeat their visit, for Balandier received an request to appear before the "German Recruitment Office" in Paris, with which he complied. There a contract form was submitted to him (Prosecution Exhibit 1934) which he allegedly refused to sign. However, the fact that the contract is not signed, does not prove Balandier's testimony; for Balandier only received a copy, whereas the contract itself remained at the recruitment office. (testimony JOERSS, Transcript p. 8515).

According to the contract, Balandier was intended for employment by I.G. in Bitterfeld. But it does not become evident from the document, nor did Balandier make any assertions to the effect that the I.G. had anything to do with his recruitment or conscription.

Considerable material has been submitted in the presentation of evidence for the defendants Schneider and Krauch regarding the role which I.G. employees played in connection with the recruitment.

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Upon orders of the General Plenipotentiary chemistry the I.G. had to send some employees abroad occasionally, where the former selected the recruited workers solely on the strength of their suitability for work in the chemical industry, and if necessary also assisted with the transport of workers to Germany. (Witness Weiss, Transcript p. 7638; witness Joerse, Transcript p. 8487; Schneider, Exhibits 124, 126, 127 and 129, Schneider Document book III). In the case of Balandier, the I.G. was apparently not even involved to this extent; for Balandier arrived with his comrades in Bitterfeld without any escort and nobody was at the station to receive them. (Transcript p. 7933).

According to Balandier's allegedly unsigned contract, this expired after one year. Balandier did not state whether he made serious efforts - and if so, what these were - in order to cancel the labor contract after one year or at a later date. According to Schneider Exhibit 142, Schneider Document book IV, the contract, in the absence of any definite agreement, was considered as valid for an indefinite period; the worker had to obtain the consent of the Labor Office if he wished to give notice. It is not clear why Balandier stayed in Germany till the end of the war, and there is always the possibility, that he liked staying there.

4. Supervision.

Balandier mentions police supervision

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which was exercised over the foreign workers and which prevented him from leaving the country - this of course only being possibly by breaking his labor contract. But on the other hand he had to admit, that some freedom of movement was accorded to the workers, that they for instance were allowed to go to town and visit places of amusement and that they were also permitted . . . to visit neighboring towns. (Transcript p. 7943). Witness JOLISS (Transcript p. 8520) and the affidavit ZABEL (Buegin Exhibit 53, Buegin Document book V) mention the freedom of movement allowed to foreign workers. As long as ZABEL was working in Bitterfeld - up to March 1942 - large numbers of foreigners not only went to the movies; to restaurants and swimming pools, but travelled in all directions in their free time for instance also to Berlin. The police exercised a general supervision affecting both, Germans as well as foreigners, and of course this was more noticeable during the war than in normal times.

5. Type of work

Balandier describes the work as being hard and harmful to health, and declares that "several persons" returned to France in very poor health. He stated during his cross-examination, that he fell ill himself, but upon being questioned, he could not assert that he was subject to any permanent ill-effects. To begin with he worked in the powerstation and then in the elektrode department. He had no complaints regarding his work in the power station. Buegin testifies, that the work in the elektrode department was in no way harmful to health.

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The salubrity of the work in general was investigated by a physician who had been active in industrial medicine for many years (BUERGIN, Transcript page 8423 and MICHAELIS, BUERGIN Exh. 90, Doc. Book VII page 34); prior to their assignment the individual workers were given a medical examination to determine their fitness (Affidavit TSCHERTER, BUERGIN Exh. 43 and DREES, BUERGIN Exh. 46, both in BUERGIN Doc. Book V; Dr. MICHAELIS, BUERGIN Exh. 90, Doc. Book VII). In the above mentioned affidavit DREES also refers to the careful selection of workers who were eligible for special training and to their thorough instruction. SIEBEL and SCHLEIDER (BUERGIN Exh. 47 and 48, BUERGIN Doc. Book V pages 44, 47) affirm the employment of foreigners as craftsmen, office employees, laboratory assistants, chemists and engineers.

6. Hygiene and Alimentation.

BALMIEDER then complains about the allegedly inadequate hygienic conditions in the camp and specially about the vermin (transcript page 7947). However, he had to admit that the living huts were disinfected approximately every 2 - 3 months (transcript page 7948). It is in fact impossible to exterminate vermin altogether in such camps, the less so if people from different countries and with different personal habits live together. It has been testified several times that the camp inmates themselves through their uncleanness, by unreasonable conduct

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or obstruction during the disinfection, repeatedly brought in the vermin (TSCHERTER, BUEGIN Exh. 43, Doc. Book V, page 11; statement BUEGIN, transcript page 8423). The witness Fross CHESTER-CHEFFOLI specially criticizes the improper and rough treatment of the latrines and the uncleanness of the foreign workers in the huts (BUEGIN Exh. 97, Doc. Book VIII, page 8).

Of course BALANDIER does not fail to criticize the alimentation which - Fross. Exh. 1398 - he states to have been absolutely insufficient and of very inferior quality. In order to keep alive, he was allegedly forced to spend his salary on additional food at high prices, which he among others also bought from colleagues. When it was pointed out to him during the cross examination that despite these alleged current high expenditures he was able to make considerable money transfers to France, he tried to make the excuse that he did so in order to procure food from France. He stated that the money transferred did not exceed 1000 RF, while in fact he transferred savings of 1360.- RF to France during 1½ years (BUEGIN Exh. 69, Doc. Book VI). The alimentation - in addition to which BALANDIER also drew a heavy worker's ration card since 1944 over the coupons of which he was able to dispose as he pleased - could not have been inadequate. Weighty evidence has been submitted by the defense.

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which reveals that the alimentation of the foreign workers - since the beginning of 1942 the system had been changed so that all food rations were issued in the camp, with an additional meal being supplied at the plant - was absolutely adequate (TSCHERTER, BUERGIN Exh. 43, BUERGIN Doc. Book V; OERBE and SCHULTE, BUERGIN Exh. 61 and 62, Doc. Book VI). VON SOIRON (KRAUCH Exh. 47, KRAUCH Doc. Book III) even terms it excellent. The communal alimentation in the camp was based on the rations for German long shift workers, so that, to the annoyance of the German workers, foreigners who did not even work long hours received more rations than the corresponding Germans. In addition the foreigners - insofar as they were heavy or heaviest workers - were issued supplementary ration cards over which they could dispose as they pleased. They conducted transactions with these ration cards on a large scale in order to obtain funds for entertainment and for expensive card games (ZIEBEL, BUERGIN Exh. 53, Kurt SCHNEIDER, BUERGIN Exh. 48, both in Doc. Book V; BUERGIN, transcript page 6425). The BUERGIN Exh. 32, Doc. Book VI shows the rations for the general camp alimentation for the Eastern workers and the prisoners of war during a period of four weeks in February 1944; rations by far exceeding those which the German civilian population must scrape and work on today. It is generally known that the food rations for the civilian population during war, the supplementary rations for heavy work and the rations for communal alimentation

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which also applied to the foreign workers in the same manner, were controlled by the government food authorities and the German Labor Front to the last detail (Witness GISS, transcript page 7639). Despite the fact that the IG had to adhere to these rations and although preferential treatment of the foreign workers was prohibited on principle, the IG in the Bitterfeld plants did its utmost to improve the alimentation in the camp and in the works by purchasing unrationed foods and by operating its own agricultural enterprise. The IG gave the foreign workers special rations of coffee, tobacco etc., just as the German workers received it; it had cooks of their own nationality prepare the special food the foreigners were used to; the quality of the food was currently examined by the district physician, the camp physicians, the witness JOERSS and by Dr. BUERGIN himself (compare BUERGIN transcript page 2418 and the above mentioned affidavits of GEMKE, SCHULTE and OHLKEUTH, BUERGIN Doc. Book VI).

7. Leave.

According to his statement BALANDIER, during the 2½ years of his activity in Bitterfeld, was never granted leave in France. That fact is easily explained, because according to regulations governing leave issued by the Reich Ministry of Labor, later by the Plenipotentiary for Labor Allocation, he as an unmarried man was entitled to leave only after completion of a working year, i.e. after November 1943, which according to the work situation had to be granted

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within the next six months, that is within the period from November 1943 to May 1944. However, during that time the authorities suspended all home leaves, at first because of the transport conditions which had become most critical and later because of the Allied invasion of France (compare SCHNEIDER Exhs. 147 - 152, SCHNEIDER Doc. Book IV; witness WEISS, transcript page 7642; BUEGIN Exhs. 58 - 60, BUEGIN Doc. Book V). It is therefore not the IG or BUEGIN, but a consequence of unfortunate circumstances which prevented BALANDIER from going on leave; for the IG granted all foreign workers leave in accordance with the regulations of the government labor administration which it had to adhere to; TSCHENTER testifies (BUEGIN Exh. 43, BUEGIN Doc. Book V page 7), that particularly the Frenchmen were granted leave in a generous manner and that occasionally, for important reasons, home leave was approved before it was due. The Italian STRESS confirms that right until the last year of the war home leaves were granted regularly (BUEGIN Exh. 70, Doc. Book VI, page 27). The BUEGIN Exh. 59, BUEGIN Doc. Book V for instance shows the large number of leave trains for foreign workers in the summer 1943.

Questioned during the cross examination, BALANDIER at first denied that he was financially compensated for the home leave he missed and, without being asked, he added that none of his colleagues had ever received compensation for leave either. Later he more or less admitted that fact.

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However, his furlough pass for 1943 clearly establishes this. (Buegin Exh. 1, Doc. Book VI). The occasional references to a "hostage" for a foreign worker going on furlough (Prosecution Exh. 1328, volume 88, and handwritten remark of DUEBGIN in Prosecution exh. 1964) are explained by the expert witness WEGNER, who states that - in the case of mass home-leave journeys - it was pointed out to every first batch that no further group would be authorized to leave until they had returned. (Buegin Exh. 76, Doc. Book VI, page 54).

8. Medical Care.

BALABODIN's attacks on medical facilities in Bitterfeld are quite contrary to the facts. Apart from the medical examination on entering employment, as testified by DREBER (see above-mentioned Buegin Exh. 46, Doc. Book V, page 40), both foreigners and German workers had several German and foreign physicians for routine medical care and health checks. (FABIANER, Buegin Exh. 52, Doc. Book V, page 62). The chief medical officer of the labor camps, Dr. HILGENFELDT, is factory physician of the dye and film factory Welfen to this day. Medical care in the individual factories conformed with the police regulations for industry applicable to Germans and foreigners. The physicians treated the workers in the outpatient department or sent them

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to a specialist, municipal or IG hospitals (affidavits MICHAELIS, Burgin-Exh. 90, Doc. Book VII, page 34 - On mass X-ray examinations and medical consultation hours for foreigners see Burgin Exh. 56 and 57, Doc. Book V). According to JERSS' testimony (transcript page 8495 etc. and 8519), IG first had to restore the health of many of the foreign workers by such means as careful medical and particularly also dental treatment, as well as inoculations, because they arrived underfed and in a poor state of health in Bitterfeld. JERSS also testifies that as a rule the sick-rate among the foreign workers was lower than among those workers who did not live in the camp. Premature issue of "fit for work" certificates to foreign workers and refusal of medical treatment by insurance physicians are referred to by JERSS as preposterous, because the national health insurance serving the foreign workers would have had greater expenses in the case of neglected diseases. The sickbays set up in every camp block were unfortunately not always fully utilized, because unfit and sick foreign workers were often reluctant to leave their rooms and go to the sickberths. (Transcript page 9516).

9. Misconduct and Punishments.

BALANDIER has testified that the camp leader ruled over the camp and could

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do just as he pleased, (transcript page 7954.) The camp leader, he said, was an employee of IG. The camp leaders were in fact employed by IG, but appointed and trained for their work by the German Labor Front. Thus they were by no means regular IG employees, but were recruited from German Labor Front circles, and sent to IG by the German Labor Front. The latter insisted on picking and supervising the camp leaders, on constantly checking the camps and interfering with the affairs of the foreign workers. By a decree of SAUCKEL's dated 7 May 1942, the task of supervising all foreign labor employed in Reich territory had been solely and exclusively delegated to the German Labor Front, and a decree issued by SAUCKEL in 1943 specifically reaffirmed this (SCHNEIDER Exh. 171, Schneider Doc. Book V). This by-rule of the German Labor Front caused constant friction between Labor Front and IG (see affidavit HRECKY, WIEBELUNG, TSCHERTER, ZABEL and FAIRGER, Buegin exh. 44, 51, 43, 53 and 52, Buegin Doc. Book V; testimony JESS, transcript page 8517). It goes without saying that the factory management did everything possible to employ suitable men as camp leaders and that it exercised strict supervision over their activity. On the whole, the camp leaders' conduct was correct and decent. Thus, the witness BREUER-CHEFFOLI (Buegin Exh. 97, Doc. Book VIII) describes the woman camp leader of the women's camp as the best woman she had met in Germany; she also praises the good treatment by the camp leader.

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Consequently, BALANDIER's allegation that the camp leader often used a whip on the French workers is undoubtedly a boundless exaggeration. It is obvious that such illegal treatment could not have been tolerated from the factory management for long, and would moreover have had the most disagreeable consequences for the camp leader himself in view of the foreigners' being in the majority. As testified by several witnesses (see affidavit TSCHERTER and testimony JOESS, transcript page 8498, 8520), RUEGIN had issued strict orders against such maltreatment (Buegin transcript page 8426). FAELER admits (Buegin exh. 52, Doc. Book V, page 67), that occasionally a camp leader, aggravated by the conduct of the lower elements among the foreign workers, would commit some wrong; however, according to NEBELUNG's testimony, (Buegin Exh. 51, Doc. Book V, page 51) unsuitable camp leaders were removed.

The forms of punishment in the case of foreign workers for violation of work or camp discipline, were rigidly decreed in every detail by state legislature and based on the provisions of the labor regulation act concerning German workers: reprimand, increasing money fines, fines, report to the Reich labor bureau, subsequently to the political police (see Schneider Exhibits 184 to 196, Schneider Doc. Book VI and affidavits TSCHERTER, Buegin exh. 43, Doc. Book V, also RECHER, Buegin Exh. 76, Doc. Book VI). According to the testimonies of TSCHERTER and RECHER, such punishment was always preceded by a careful investigation. The whole matter of punishment is discussed in Dr. STUM's essay (Krauch Exh. 185, Krauch Doc. Book II).

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With Pres. Exh. 1396 (vol. 70) the Prosecution obviously wishes to prove that at Bitterfeld particularly sharp measures were taken against foreign workers. Buegin has explained the matter. (trans. p. 8428). The reference at a meeting of plant managers in 1944 to the planned application of "educational methods which have proved successful in other places", means that it was desired to make enquiries in other plants concerning the methods applied there, since neither army fines nor the issue of food tickets at the plant, which was introduced in order to safeguard against absenteeism, had eliminated shirking. The fact that Buegin was no hard taskmaster, but only advocated normally permissible measures in order to increase the output, has also been certified by HENCKY (Buegin-Exh. 44, Doc. Book V, p. 27).

The legal regulations and the above mentioned statements by the witnesses for the defense, contradict Balandier's statement that "all violations of work or camp regulations ... were reported... to the Gestapo". Incidentally according to SCHNEIDER - Exh. 196, SCHNEIDER Doc. Book VI, it was of course the Police which decided what measures should be taken in any severe cases of violation of workers' discipline which actually came to the knowledge of the Police,.

10. Eastern workers. Employment of women and children.

The so-called "Eastern workers" were, as a result of governmental and party official measures based on the racial ideology of National Socialism, at first placed in a worse position than the other foreign workers insofar as their work and their living conditions were concerned. (Op. statement by Weiss, trans. p. 7643). Freedom of movement for Eastern workers was only gradually granted by the authorities in the course of time. At first, the camp

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for Russian workers had to be fenced in with barbed wire (SCHNEIDER - Exh. 185 and 186, SCHNEIDER Doc. Book V), and when its removal was ordered, it was not so easy to replace it by ordinary wire because of the general shortage. Balandier's statement that the Russian camp in Bitterfeld had a barbed wire fence around it until 1945 is, of course, just as wrong as his statement that German soldiers guarded the camp of the Russian civilian workers. The guards were provided by the Work's Security Detachment, as is shown by Prosecution Document Exh. 1963. It is evident that it was not the task of the German Armed Forces to provide soldiers for the guarding of the civilian workers' camps. Especially during the last year of war, the Armed Forces would certainly not have delegated soldiers for such civilian purposes. Balandier confused the Russian camp with the POW's camp situated next to it (Buegin, transcr. p. 2419); but he nevertheless insisted upon his wrong statement during cross examination, in spite of all remonstrances. Balandier's statement that the alimentation of the Russians was even less satisfactory than that of the French, is thoroughly contradicted by the statement of the factory doctor Dr. MICHAELIS and, in the case of the aluminium plant, by Dr. RITTER (Buegin- Exh. 90 and 93, Doc. Book VII). Both state that Eastern workers received from the

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plant more than the rations fixed by the authorities which in their turn were not less than those of the Germans and other foreigners; they were, only composed in a different way (Burgin Exh. 38, Doc. Book VI). RITTER states in particular that the fortnightly control of the foreigners' weights, especially those of the Russians, disclosed a considerable increase on the average. The curtailment of rations which, according to Prosecution Exh. 1379, vol. 71, was allowed by the authorities in the case of Eastern workers for disciplinary reasons, was not carried out in Bitterfeld and Wolfen-Parben, because the will to work of the Eastern workers could not thereby be increased, and, furthermore, because such a measure was in practice impossible in view of community feeding system. (Burgin, Transcrip. 8420; WEGNER, Burgin-Exh. 76, Doc. Book VI, p. 56).

According to Balandier's statement, the Russian workers were engaged in the heaviest tasks. At his examination he did not go into further detail about this; Burgin himself contradicts this. (transcrip. 8419). Here, as everywhere else in his affidavits, Balandier is probably exaggerating. It is characteristic of Balandier's boundless tendency to exaggerate and to generalize, that he not only asserts, that Russian women and children - the latter often between the ages of 12 and 14 - had to do the same work as the men - i.e. the heaviest type of work - but also that they were "all constantly beaten and maltreated by the Work Security Detachment". If the circumstances had been as described by Balandier - namely the worst type of alimentation, still worse than that of the French who allegedly could not manage to live on their own rations; heaviest work without consideration for physical fitness; constant maltreatments no Eastern worker could have survived the war in the Bitterfeld camps, and the

CLOSING STATEMENT BY BURGIN

IG in its turn would not have obtained any output from those men and would thus only have harmed itself. As a matter of fact, the IG recognized and stimulated a good output from Eastern workers by means of premiums as soon as this was allowed by official legislation (Burgin-Exh. 55, Doc. Book V).

In order to reduce Balandier's untrue and exaggerated statements to proper proportion, the following must be stated: It is a fact that young people arrived with the Russian transports; the IG, however, had nothing to do with their allocation; even the Prosecution has not been able to state that the IG asked for the allocation of children; such a statement would be absurd. Insofar as children and young people arrived, they were employed by the IG - in order to keep them under some sort of supervision - in accordance with official regulations, (cp. SCHNEIDER Exhibit 146, SCHNEIDER Document Book IV), namely either in easier jobs, also in laboratories or, if suitable, they were sent to a training department (BURGIN transcript page 8421; TSCHERTER and LEONER, BURGIN EXHIBIT 43 and 76, BURGIN Doc. Book V and VI).

With regard to the employment of women, BURGIN (transcript page 8421) has stated in a credible manner that women indeed had to do work which had formerly been done by men - for they often replaced the men in Germany as well as in the other belligerent countries; however, the work performed by female workers of various nations was of a type where women could develop their particular dexterity (cp. also TSCHERTER, BURGIN Exh. 43, Doc. Book V). Heavier and more responsible types of men's work was performed by German women (SCHNEIDER, BURGIN Exh. 48, Doc. Book V, page 48).

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(BUEGIN Exh. 69 Doc. Book VII page 31). Three affidavits given by female foreign workers (BUEGIN Exh. 71 and 72, Doc. Book VI; BUEGIN Exh. 97, Doc. Book VIII) describe the living conditions of the foreign women, including the accommodation and care taken of sick and pregnant women, as being adequate in all respects and even good.

11. Shooting of a Worker.

The regrettable shooting of a Russian worker by a Works Security Police official in July 1942, which is revealed by the Prosecution Exhibit 1963, can in no way be laid to the charge of the defendant BUEGIN. The Prosecution itself, in Exh. 1300, Volume 67, has submitted the extremely strict regulations made by HITLER regarding the limitation of freedom of movement with respect to Eastern workers. The Works Security Police responsible for supervising the Eastern workers was originally an organization created by the I.G. for the purpose of preventing theft and industrial espionage; its tasks have been enumerated by the affidavit LABEL (BUEGIN Exh. 53 Vol. V) and the Works Security Police ordinance promulgated in 1937 (Buegin Exh. 91 and 92 Document Book VII). During the war, the Works Security Police were also subordinated to the Security Police, among other things, with regard to the supervision of Eastern workers, its officials were appointed as Auxiliary Police and had to comply with police instructions. Thus as far as supervision and the authority to issue instructions were concerned, the Works Security Police no longer came under the I.G. The memorandum issued by the Gestapo on 24 June 1942 (SCHNEIDER Exh. 197, SCHNEIDER Doc. Book VI) proves that shortly before the incident in Bitterfeld, the following police order had been given: "Escaping Russians are to be shot at immediately and with the firm intention of hitting them." It is obvious

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that the Works Security Policeman employed as an Auxiliary Police official acted according to those instructions with regard to the Russians who were escaping under cover of darkness after ignoring the previous challenge made by the guard. Therefore, no blame can be attached to the plant management for this action, not instigated by them and taken by the Works Security policeman who was only answerable to the Police.

12. Hanging of Russians.

The fact that the testimony of the witness BALANDIER is not to be credited can be seen with particular clarity from the cursory and glib statement made in his affidavit to the effect that, on several occasions Russians were hanged for political reasons in the Russian Camp at Bitterfeld. When cross-examined he could only recall one specific instance (transcript page 7956) and asserted that he had seen the same ceremony carried out on other occasions, but had not concerned himself in these cases, and he could not even remember how often anything of this kind had occurred. The sole case of this sort which was not contested by the Defense occurred in July 1944, as proved by the Prosecution Exhibit No. 1964. The witness LING, whose statements were convincing by reason of his quiet objectivity, has described the incident and confirmed that it was the only one of its kind. LING's statements prove beyond doubt that the Gestapo brought several Russians to Bitterfeld from outlying districts who did not belong to the I.G. workers at Bitterfeld, for the purpose of hanging them either in view of, or actually in the Russian Camp, in the presence of their countrymen and the plant Security officers subordinated to the police, so that the Eastern workers might be deterred by fear from entering into political intrigues.

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LANG, who at the time of the incident was deputising for BUEGIN, who was on leave, refused on behalf of the I.G. to provide material belonging to them for the execution and thereby to involve the I.G. in the incident; he repudiated the participation in the hanging which was attributed to him. Thus this incident is, regrettable as it may be, cannot in any way be laid to the charge of the I.G., nor to that of the defendant BUEGIN in particular.

B. Prisoners of War.

BALANDIER is able to make statements regarding everything connected with allocation of labor in Bitterfeld. In his affidavit he has also made reference to the French prisoners of war, of whom he asserts that they "were continuously and directly ^{engaged} on the manufacture of war material (gunpowder)". During cross-examination he finally admitted that he had no idea whether in fact gunpowder was manufactured in Bitterfeld. (transcript page 7958). Certainly P.O.W's were employed in Bitterfeld; French, Russians, Italians and at times Indians, (BUEGIN transcript page 8430), but there was no gunpowder manufactured at Bitterfeld. BALANDIER had to admit that he had not seen one French prisoner of war engaged in the production of gunpowder, he merely saw prisoners of war employed on the manufacture of chlorates. According to the statement of the witness LANG (transcript page 6501) chlorate is an agent used for destroying weeds and is a primary product in the manufacture of an explosive which is used as a safety explosive in mining. During the first World War, an explosive manufactured from chlorate (ammonium-perchlorate) was used by the French.

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This is what Delandier might have thought of when he made his statement.

As a proposition, it may be pointed out that, as shown in the PW documents submitted by the defence, for Dr. KELLUCH, the employment of prisoners of war in private industry was supervised by PW camps under military direction according to the Geneva Convention of 1929; only these camps were authorized to decide the type of work admissible for prisoners of war. Therefore solely the Wehrmacht authorities were responsible for the employment of prisoners of war in accordance with the Convention. According to TSCHERTER's and SCHNEIDER's statements (BUEGIN Exh. 43 and 46, BUEGIN Doc. Book V)

approval by the IG counter-intelligence officer was necessary for employment in certain enterprises in addition to authorization from the PW camp.

The information given in the circular of August 1942, Pros. Exh. 2173, Doc. Book 92, to Bitterfeld plant manager concerning punitive measures against prisoners of war in case of inefficiency constitutes nothing but a transmission of orders issued by the competent Wehrmacht authorities. It clearly follows from PW Exh. 33, PW Doc. Book pages 38 - 53, that the employer and his employees were not authorized to penalize prisoners of war in any way. Likewise, PW exhibit 42,

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PT Doc. Book page 88, states that reluctant workers are to be penalized by the Wehrmacht. The information given to plant managers in Pres. Exh. 2173 therefore served only to instruct the plant managers, as to the procedure of reporting inefficient POW's to the supervising officer. Incidentally, the Prosecution document speaks for the IG and the defendant BUEGIN, showing that according to an agreement between the IG and the POW camp, the prisoner of war was to be cautioned, first before more severe measures were taken by the supervising officer. Thus the IG tried to prevent unnecessary severity in the punishment of prisoners of war by military supervisors (cf also BUEGIN, transcript page 1A317). BUEGIN as well as (transcript page 8424), the witness JOERSS (transcript page 8503), Hango and Ritter (BUEGIN Exh. 75 and 93, BUEGIN Doc. Book VI and VII) have made statements on positive accomplishments in favour of prisoners of war employed in Bitterfeld and in connection with the sick rate among prisoners of war referred to in Pres. Exh. 1396, vol. 70.

C. BUEGIN's attitude.

According to many affidavits and statements by witnesses, BUEGIN was not a National Socialist and therefore did not accept the Nazi ideology, especially the views

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concerning the superiority of the German master race and the inferiority of foreigners (cf. e.g., TSCHERTER, SIEBEL, NEBELUNG, ZABEL, BUEGIN Exh. 43, 47, 51, 53, Doc. Book V; WOHLGEMUTH, CHILBERT, BEIER and SCHMID, BUEGIN Exh. 53, 71, 76, 77, Doc. Book VI; ERLICH, BUEGIN Exh. 98, Doc. Book VIII). His achievements under more patriarchal conditions in Rheinolden are sufficient to show that he devoted himself successfully to the welfare of the workers subordinated to him. It was this social and human attitude which made him see to it, as far as possible, that also in Bitterfeld the foreign workers were treated decently under these special conditions. He equipped their dwelling camps most generously and achieved his purpose notwithstanding official resistance and scarcity of material. He also arranged for air-raid shelters to be made available to foreign workers in the same manner as to German workers (RECKY, BUEGIN Exh. 44, Doc. Book V; Von SOIRON, KRAUCH Exh. 47, KRAUCH Doc. Book III). He employed interpreters and confidential agents who were to establish a close relationship and to promote understanding between the works management and foreign workers and urged his plant and department chiefs as well as the personnel office to carry out his ideas. Of course the increasing lack of a number of necessary commodities

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during the war prevented the implementation of many a good plan. However, the affidavits of foreign workers themselves - repeatedly quoted above and of greater significance than the very modest documents, submitted by the Prosecution - show that in general every humanly possible effort was made for the foreign workers. And this is confirmed most impressively by the attitude of the American forces which occupied Bitterfeld and whose officers, after detailed inspection of the labor camps and after interrogating foreign workers, changed their original opinion about enslavement of foreign workers at Bitterfeld (BUEKIN Exh. 40 and 41, Doc. Book VI).

D. Auschwitz.

The Prosecution tries to connect Dr. BUEKIN and the other members of the Vorstand with complexes under the indictment with which they had no direct connection. The Prosecution mainly refers to the Auschwitz complex. I first of all wish to point out that the enterprises of the works combining Control Germany were in no way connected with the IG plant Auschwitz. BUEKIN himself was never at Auschwitz. If he heard about Auschwitz, it might possibly have been at Technical Committee or Vorstand meetings. It has however repeatedly been stated that the conferences of the Technical Committee about credits for the construction of the Auschwitz IG plant were short, once the necessity of the building project.

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was known and the various credits had carefully been dealt with previously by the competent IG departments. It is therefore beyond doubt that BUECHER - who as a factory manager had a great many worries of his own and was not connected with Auschwitz materially or personally - did not get to know any particulars, in view of the fact that the entire Auschwitz complex was dealt with briefly only (transcript page 8432). As the IG executives in charge of the Auschwitz constructions deserved and enjoyed BUECHER's confidence and as BUECHER heard no rumors concerning conditions^{in Auschwitz}, there was no reason for him to become suspicious. The charges made by the Prosecution with respect to Auschwitz - be they justified or not - cannot incriminate the defendant BUECHER.

In connection with DEESCH incidents, Argeinal, a product supplied by IG Wulfen to DEESCH, has occasionally been mentioned. (Pres. Exh. 1769, vol. 82). The cross examination of the Prosecution witness REID (transcript page 5004, the statement PETERS (transcript 10546, page/10639), as well as the affidavit SCHNEIDER (BUECHER Exh. 78, Doc. Book I) clearly show that Argeinal is an agent produced at Ludwigshafen, distilled at Wulfen and sold by the Leverkusen insecticides department to owners of grain silos for the destruction of grain weevils, and that it is quite unsuitable for the extermination of human beings.

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E. Medical experiments.

BUEGIN denies having heard anything concerning medical experiments on concentration camp detainees in general or especially in connection with the IG (transcript page S432), and in view of his position in the IG and the type of the factories managed by him, it furthermore cannot be assumed that he could, or of necessity must, have heard about them.

No connection whatsoever can therefore be established between BUEGIN's position as a member of the Vorstand and the complexes under the indictment intended to prove the extermination of human beings and mass murder.

CLOSING BRIEF BUEGIN

CERTIFICATE OF TRANSLATION

9 June 1948

We, the undersigned, hereby certify that we are duly appointed translators for the English and German languages and that the above is a true and correct translation of the Closing Brief Buegin.

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HANNAH SCHLESINGER
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" 4 - 9

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53 - 57
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" 23 - 29
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HERMAL TRAFELD
ETO No. 35126

" 30 - 34
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H.B. BUSSMANN
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" 35 - 39
47 - 52
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ELLI KENNETT
ETO No. 16673

" 40 - 46

MONICA TELLOOL
ETO No. 20148

" END "

Closest to SCIENCE, BUT THE FISH (BUT THE FISH)
FACTS I J E

Case 6
Defense

Closing Brief for the defendant

Dr. Buettelisch

I + II

in Case VI

Military Tribunal XI VI

submitted by the

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Part I

Aggressive warfare.



Aug

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Corrections for Parts I, II, III and IV inserted after this page

Corrections to Closing Brief Baeterisch.

Part I.

<u>page</u>	<u>line</u>	<u>instead of</u>	<u>correction or insertion.</u>
11	19	Doc. Guttineau 48, Exh. 601 Book III	Doc. Guttineau 48, Exh. 60 Book III
41	last	-	<u>and germ. page 9232 and engl. page 9232.</u>
41	34	a few copies were <u>printed</u>	a few copies were <u>misprinted</u>
13	18	NI-9477 Exh. 512	NI-9477 Exh. 513
17	21	Doc. Bus. 218, Exh. 69, Book VI	Doc. Bus. 218, Exh. 69, Book IV.
32	19	Doc. Bus. 303, Exh. 168, Book III.	Doc. Bus. 303, Exh. 168, Book VII.
33	after 21	-	<u>testimony of Dr. Krusch germ. page 7241. engl. page 7241.</u>
37	1	germ. page 8527 engl. page 8527	germ. page 8727, engl. page 8578
40	9	Doc. Bus. 25, Exh. 119, Book VI	Doc. Bus. 25, Exh. 119, Book VI
53	last	-	<u>NI-10561. Exh. 994, Book 43.</u>
54	6	heavy <u>carbohydrates</u>	heavy <u>hydrocarbons.</u>
57	8	Doc. Bus. 64, Exh. 122, Book IV	Doc. Bus. 64, Exh. 122, Book VI.
57	21	Doc. Bus. 289, Exh. 117, Book VI	Doc. Bus. 289, Exh. 117 Book VI <u>Doc. Bus. 267, Exh. 116, Book VI</u>
58	19	Doc. Bus. 39 Exh. 42, Book VI	Doc. Bus. 49 Exh. 42, Book VI
60	after 24	-	<u>Doc. Bus. 70, Exh. 125, Book VI</u>
	45	-	<u>Doc. Bus. 313, Exh. 132, Book VI.</u>
63	39	Doc. Bus. 6, Exh. 125, Book IV	Doc. Bus. 6, Exh. 125, Book VI.

page	line	instead of	correction or insertion.
64	4	<u>extraction of carbohydrates</u>	<u>production of hydrocarbon.</u>
70	33	-	<u>NI-10442, Exh. 280, Book 42.</u>
73	last	-	<u>Doc. Bus. 312, Exh. 129, Book VI</u> <u>(Supp.)</u>
75	39 u. 40	<u>Doc. Bus. 40, Exh. 22, Book V</u> <u>Doc. Bus. 41, Exh. 25, Book V</u>	<u>Testimony of Dr. Kramph germ.</u> <u>page 5147, engl. page 5143.</u> <u>Test. of Dr. Bus. germ. page 5772</u> <u>engl. page 5522.</u> <u>Special evidence relating</u> <u>Doc. Bus. 41 u. 42</u> <u>Doc. Bus. 42, Exh. 26, Book V</u> <u>41, Exh. 25, Book V</u> <u>Test. of Dr. Bus. germ. page</u> <u>5772/3 engl. page 5523/4.</u>
76	43	not a <u>specialist represent-</u> <u>ative.</u>	<u>not an official (Fachbeauf-</u> <u>tragter)</u>
77	10	The <u>work</u> groupen	The <u>study</u> groupen (Arbeitsge- meinschaften)
78	after 24	-	<u>Bustarisch never was an offic-</u> <u>cial in the armament ministry</u> <u>nor in any other ministry</u> <u>(Testimony of Dr. Bustarisch</u> <u>germ. page 5771, engl. page 5498.)</u>
86	last	-	<u>Doc. Bus. 43, Exh. 22, Book V</u>
88a	19	engl. transcript <u>*****</u>	transcript <u>13 502</u>
88a	26	-cript page <u>*****</u>	-cript page <u>13 501.</u>

Correction to Gleason's Brief Basterfield.

Part II.

Page	Line	instead of	correction or insertion.
2	after 31	-	refusal. <u>Farben was one of the shareholders and Basterfield was designated by Farben in the "Aufsichtsrat" of the Conti AG.</u>
1	after 32	-	<u>Affirmat Heumann, Vice-President of the "Aufsichtsrat".....</u>
3	4	<u>per the Vorstand in charge of the administration.</u>	<u>ordered the Vorstand to take over the administration.</u>
	7	-	<u>Testimony of Dr. Ilmer, born. name [unclear] and [unclear] relating to [unclear].</u>
7	3	<u>deliberation</u>	<u>discussion.</u>
8	23	<u>Exhibit 1981</u>	<u>Exhibit 1982</u>
9	after 11	-	<u>This report had nothing to do with Kontinente Oel A.G.</u>
10	18	<u>with instruction</u>	<u>by order of the supreme planning authorities in Berlin.</u>
11	27	-	<u>by the latter.....consequently the Vorstand declared itself willing to pay only the actual value to the amount of three million and remitted this sum to Wifa.</u>
M	after 35	-	<u>all in annex. Book II</u>
M	35	<u>encl. page 8903</u>	<u>encl. page 8903</u>
M	37	<u>encl. page [unclear]</u>	<u>encl. page 14. 497.</u>

Correction to Olsenskrift Bastafisch.Part III.

<u>page</u>	<u>line</u>	<u>instead of</u>	<u>correction or insertion.</u>
1	52	german page 8700, 8848 and 8618, 8767	german page 8700, 8848 engl. page 8618, 8767.
2	4	work of a plant unmaterial nature	work of a plant <u>leader</u>
4	37	-	to workers lives, <u>if the plants were running.</u>
8	16	testimony Ambros german pages 7904, 7914 engl. pages 7143 - 7151	testimony Ambros german pages 7904 = 7914, engl. pages 7230 - 7240.
10	13	german page 7132	german page 7217
10	21	evidence of the <u>prosecution</u>	evidence of the <u>defense</u>
10	31	Book <u>III</u>	Book <u>VIII</u>
11	last	final choice of the building size	final choice (<u>Verbleibung</u>) of the building size.
14	18	Oktober 1942	Oktober 1942
16	last	german page 8855	german page 8853
19	13	in a <u>dilemma</u>	in a <u>position of constraint.</u>
21	8	testimony Faust page xxxxxx of the English	page 14002 of the English
21	21	a discussion on 27. <u>February</u>	on 27. <u>March</u>
28	last	page 7072 of the English	page 7157 of the English
31	29	testimony Dr. Bus. german page 9072	german page 9024

page	line	instead of	correction or insertion.
31	31/32	<u>testimony Dr. Kraus german</u> <u>page 9072 engl. page 8971</u>	strike this.
34	4	testimony of Dr. Kraus ger- man page 9014 engl. page 8979	testimony of Dr. Kraus ger- man page 9074 engl. page 8979
	36	Dok. Bus. 174, Exh. 148	Dok. Bus. 174, Exh. 138
36	9	Exh. 231, Book 2	Exh. 231, Book 1
36	after 16	-	<u>Testimony Munch german</u> <u>page 14074 engl. page 14 334</u>
39	2	Originally Farben had nothing to do	Originally Farbens partici- pation in Fuertensgrube had nothing to do.
40	16	Dok. Bus. 332, Exh. 225	Dok. Bus. 332, Exh. 226
40	18	Dok. Bus. 341, Exh. 288 <u>Supplement III to Doc. Book</u>	Dok. Bus. 341, Exh. 288 <u>Supplementary Book III</u>
40	last	Dok. Bus. 313 = 134	Dok. Bus. 313, Exh. 134
41	10	Test. Ambros german page 8115 - 8116	german page 8115 - 8116
41	11	engl. page 8038 - 80	engl. page 8038 - 8041
42	14	Test. Ambros german page 8013	german page 8113
44	6	see. " (Duerfeld)	Doc. Bus. the following lines also Doc. Bus.)
44	11	Doc. " 313, Exh. 154	Doc. " Exh. 154
45	8	in books 80 u. 81	in books 80 u. 81 (Exh. 1544, 1545, 1546 et. seq.)

Correction to Glasnost of Bucherbach.

Part IV

page	line	instead of	correction or insertion.
2	7	strike " cancelled "	Schneider's testimony insert: Germ.tr.page 7382, engl.tr.page 7384.
3	7	" plead "	plea
4	3	engineer	<u>chemical</u> engineer
5	after 14		insert: <u>Doc.Bug.242 - Exh.30A</u> <u>Book IX.</u>
5	23	of political questions	<u>from</u> political questions.
5	25	abuses	abuses
6	15	a few	<u>several (wenige)</u>
8	5	and <u>reserved</u>	<u>negative</u> (ablehnend)
1	after 12		insert: <u>Doc.Bug.263-Exh.222.</u> <u>Book IX.</u>
8	25		insert after hydrogenations: " <u>political and party views</u> <u>did never.....</u> "
9	22	I do <u>not</u> know	I know
9	34	after " antisemitism...?"	" <u>the attitude towards foreign</u> <u>statesmen.....</u> "
11	38	DAF <u>movement</u>	DAF (<u>Deutsche Arbeits-Front</u>).

- 7 -
(Part IV.)

page	line	instead of	correction or insertion.
15	8	English 8952	English 8953
16	8		after part: " <u>proposed this suggestion</u> "
17	31	easily Judging	easily <u>offended</u> Judging
18	12engineers actively....engineers <u>the more</u> actively.....
21	23	middly	midd <u>lg</u>
22	3	<u>about</u>	<u>through</u>
22	18	<u>please</u>	<u>meet halfway</u>
22	17	after: " given....."	" <u>given on behalf of Krone-</u> <u>Duss by an affiant who was</u> <u>a close acquaintance of</u> <u>KroneDuss. He was not.....</u>
24	15	<u>were carried on the strength</u> <u>of the Staff of one the</u> <u>Main Offices</u>	<u>were listed with the Staff</u> <u>of one of the Main Offices</u>
25	14	NI 6710 & Exhibit.....	NI-6710 & Exhibit <u>1273.</u>
29	6	Doc.Doc. <u>236</u> = Exhibit 236	Doc.Doc. <u>144</u> = Exhibit 236
29	9	1941	1944
30	(after 6		<u>The Affidavit Dr. Oigaloha</u> <u>addresses Austereisch as</u> <u>follows:</u>
30	(last		<u>cf. also: Tentative Dr. Eng.</u> <u>Comm. Transcr. page 82-87.</u> <u>English page 888/80.</u>

(Part IV.)

page	line	instead of	correction or insertion.
31	21	persecutor	persecutges
32	(after 11)		<u>Doc. Buz. 545 - Exh. 292</u> <u>Suppl. Book III.</u>
32	19	<u>it is correct</u>	it is <u>true</u>
33	26	<u>principle</u>	<u>punishable</u>
34	18		insert after: "genasification Courts:" and of the Supreme Denasification court (Ober- ster Spruchgerichtshof in Mun.). This court made several decisions, which appar- ently reject a conviction of the so-called honorary leaders (Hrenfuhrer) I am referring to the findings of the Supreme Denasification Court dated 28. Sept....
36	33	" shared by assert "	" taken a consenting part "
40	19	<u>.....furtherance which he could not give as Hren- fuhrer even the slightest degree of the SS or any of its aims.</u>	<u>.....furtherance of the SS and its aims, even the slightest one which could be imagined in connection with his being an "Hren- fuhrer"</u>
43	22	<u>adjudicated</u> (beurteilt)	<u>adjudged</u>
43 43	8	<u>the IAT</u>	strike quotation marks
47	6	page 207	page 207
48	8	<u>coincidental</u>	incidental (<u>zufällig</u>)
49	6	being	bring

(Part IV)

page	line	instead of	correction or insertion.
80	8	fr	for
57	9	this	his
57	20	herod	respect
57	after 26		Testimony Dr. Bus. Germ. Trenner, page 2208, English 1923.
57	last	vol. 21	vol. 21
83	2	name	reputation.
84	1	series definite	distinct
54	2, 3	The fact, that the defend- ant must have known.	the consideration, that the defendant "must have known"
86	28	(concept of) hardship	(concept of) necessity
87	6	hardship	necessity
88	1	hardship	necessity
89	3	guilt	guilty
55	17	states the decision	states <u>that</u> the decision
80	26	preserved	well ascertained
81	7	into. But.....	fact. Or is it not correct also to say that waging con- scientiously the purely for- mal honorary rank was the smaller evil? - But.

(Part IV)

Page	line	instead of	correction or insertion.
65	after 22		<u>Doc. Ex. 22 = Exh. 241.</u> <u>Book X</u>
67	after 18		<u>statement of Schneider, Gen</u> <u>Treasurer, page 7419 encl. pa-</u> <u>ge 7419.</u> <u>and</u> <u>statement of Oster, Gen.</u> <u>Treasurer, page 10910, encl.</u> <u>10763.</u>
67	last	Exh. 1276	Exh. 1276
1	last	denli	draft
67	after last		<u>HI-2108 = Exh. 1587 Book 21</u>
69	1	<u>is unknown either to the</u> <u>defendant or to various</u>	<u>is unknown to the defen-</u> <u>dant as well as to various.</u>
71	after 8		<u>Doc. Ex. 205 = Exh. 238.</u> <u>Book X page 20.</u>
72	22	donation of Doc.....	<u>donation. On the contrary he</u> <u>expressed his personal dis-</u> <u>inclination that such a</u> <u>donation should be made.</u> <u>of Doc.....</u>
73	7	<u>This was done tactfully.</u> <u>him</u>	<u>This was done as a matter</u> <u>of tact with regard to the</u>
73	after 21		<u>" As regards the donations</u> <u>there were definitely from</u> <u>1939 on a purely personal</u> <u>affair of Kress and or Baron</u> <u>Schroeder. The circle as such</u> <u>in its entirety never concern-</u> <u>ed itself with these dona-</u> <u>tions or determined their</u> <u>amount.</u> <u>Doc. Ex. 205 = Exh. 238 Book X</u> <u>page 20/21.</u>

(Part IV.)

page	line	instead of	correction or insertion.
74	8	raised	devoted
74	15	is the use	in the use
74	22	consideration	considerations.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Appendix: Moral-theological Opinion etc.

7	18143 <u>via</u>)	143, 143.253.144.205. <u>225. 89.</u>
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Corrections to Closingbrief English.Tabular summary Count I.

<u>page</u>	<u>line</u>	<u>instead of</u>	<u>correction or insertion.</u>
1	16		insert <u>9039 (9039)</u> (Statement Bustarisch)
1	1	Trialbrief page 85	85
2	25	NI 144	EC 144
4	last	<u>Dr. Bus.</u> (Doc. Bus.)	statement Dr. Bus. page 8737 (8035) and 8741 (8881) and statement Dr. Kroush page <u>7981 (7984)</u>
5	4		statement Kroush 8068 (8047) statement Bus. 8755 (<u>8875</u>)
6	2	NI 9327	NI 9327
6	12	Bus. 144	Bus. 144
7	4		insert: <u>Doc. Bus. 25. Exh. 112</u>
7	5		Count of the Indictment <u>42</u>
7	24		<u>NI 10661 - Exh. 924</u>
7	28	Doc. Bus. <u>42</u> = Exh. 42	Doc. Bus. <u>42</u> = Exh. 42
8	6	NI 9088 Exh. <u>224</u>	NI 9088 Exh. <u>224 224</u>
8	16		page of Closingbrief <u>61 - 624</u>

Count II.

page	line	instead of	correction or insertion.
1	18		statement Dr. Illmer 9764 (984)

2	9		statement Dr. Runschel 14710 (14487)
---	---	--	---

Count III

1	8	Doc. Bus. 171 Exh. 158	Doc. Bus. 174 Exh. 158.
---	---	------------------------	-------------------------

2	last	statement Faust 14 512 (....)	statement Faust 14 512 (14009)
---	------	----------------------------------	-----------------------------------

3	13	statement ter Meer 7207 (7180)	statement ter Meer 7214 (7187)
---	----	-----------------------------------	-----------------------------------

3	10	statement Faust 14 511 (.....)	statement Faust 14 511 (14009)
---	----	-----------------------------------	-----------------------------------

3	last	statement Faust 14507(.....)	statement Faust 14507(14005)
---	------	------------------------------	------------------------------

3	20	<u>statement Braun 9272(9277)</u>	strike this
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4	1		page of closing brief 84/85
---	---	--	-----------------------------

4	6	statement Duerfeld 12 710 (12502)	statement Duerfeld 12004 (11774)
---	---	--------------------------------------	-------------------------------------

4	8		count of indictment 132, 133, 134
---	---	--	-----------------------------------

4	11	NI 12 721 Exh. 2044	NI 14 721 Exh. 2044
---	----	---------------------	---------------------

5	13	Doc. Bus. 325 Exh. 255	Doc. Bus. 332 Exh. 255
---	----	------------------------	------------------------

Count IV

1	5		statement Schneider 7322(7324)
---	---	--	--------------------------------

2	1		count of indictment 145
---	---	--	-------------------------

2	7		NI-6710 6 Exh. 1275
---	---	--	---------------------

3	(after 3)		statement Bus. 9247(9250/60) Doc. Bus. 345 Exh. 258.
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Group IV.

<u>Page</u>	<u>line</u>	<u>instead of</u>	<u>correction or insertion.</u>
4	10 and 11		statement Schneider 7512 372871 statement Oster 10310 Q10 7631
4	8	Exh. 1276	Exh. 1276

I n t r o d u c t i o n .

In Germany after 1933 the only political and also legal authority was Hitler and the government or party functionaries directly designated by him. In collecting all power and legal authority in his own hands primarily he and his direct collaborators could be considered the perpetrators of crimes against peace. Every activity of other persons within the scope of this policy is defined by the prosecution as an act of collaboration. In its efforts to connect the defendants with the actions of Hitler the prosecution endeavored to establish the culpability of individual defendants or Farben as a whole for the most widely differing relationships to Hitler and complicity in his plans. In its arguments the prosecution wishes to prove by looking backwards from events a chain of cause and effect. It is of decisive importance, however, for the establishment of any criminal guilt whether on the one hand, the actions which the prosecution considers charges could be considered the cause of aggressive warfare at all, and whether on the other hand it was the will of the defendants to couple their activity with its causes at the time of their activity.

Farben was no so-called armament plant i.e. it did not belong to the enterprises working in direct conjunction with the Wehrmacht. The manufacture of their chemical products was determined by economic requirements and research and developments were also dictated by them. This work in the various Farben plants was managed by individual Vorstand members or plant managers specially appointed for this purpose. Larger organically connected production branches were combined in Sparten and were under the management of the Sparte manager. By this local division the responsible leaders of Farben were naturally restricted to their various work spheres. In the Tes - and Vorstand conferences of Farben the various Vorstand members reported on their particular work fields. 1)

-
- 1.) Testimony of Dr. ter Meer, Transcript German page 6987 et seq. English page 6761 et seq.
 " " Dr. Baetofisch, Transcript German page 8690, et seq. English page 8609 et seq.,
 Document v. Knieriem No. 34, Exhibit 32, Book V.
 " " " Defense Exhibit 172, Knieriem Book V.

In not recognising these facts the prosecution gave an entirely distorted picture of the connections, the responsibility and the alleged influence of the total Vorstand of Farben on any authorities or government measures. The prosecution further distorted this picture by extracting individual measures officially proscribed at that time which had become more or less office routine as for instance the introduction of tactical exercises, compilation of mob figures or the setting up of the Vermittlungsstelle W, also all sorts of donations which could not be avoided at that time, and stamped them as measures promoting the ends of the enterprise.

Insofar as the documents of the prosecution concern charges against the entire Vorstand or individual members in this respect I shall not deal with them in this statement; with regard to vital points I refer to the statements and the evidence furnished by the various defendants and to the summarised evidence presented by the defense. 1)

In this document, I shall deal, however, with the theories and documents of the prosecution which deal with the industrial development and activity of Farben within Sparte I, and insofar as they affect my client and his work.

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- 1.) Documents ter Meer, Books II, X and XI.
 Document Krauch, Doc. 15, Ex. 12 Book I
 Testimony Dr. ter Meer, Transcript German page 6954 et seq., English page 6885
 Testimony Dr. Krauch, Transcript German page 5073 et seq. English page 5052.
 Basic information of the defense book II
 Testimony of Dr. Baetofisch Transcript German page 8720, English page 8637.

In order to assess the extent of the responsibility of the Vorstand, the Sparten management and particularly my client Dr. Buete-fisch I shall discuss the activities of Dr. Buete-fisch in a short summary.

Dr. Heinrich Buete-fisch is a chemist by profession. Until 1934 he was Prokurist and deputy director of Farben, in the Ammonia plant Merseburg, (Leuna Werke). Up to this date then he acted according to instructions from the Vorstand of Farben. From 1934 to 1938 he was a deputy Vorstand member, of Farben, and from 1938 a regular Vorstand member. As from 1931 Dr. Buete-fisch attended the meetings of the Technical Committee (Tsa); of Farben after 1934, as a deputy Vorstand member he attended Working Committee meetings as a guest, and after 1938 he attended Vorstand meetings as a member of the Vorstand. Organisationally Dr. Buete-fisch belonged to the association of Sparte I. This was managed by Dr. Krauch until 1936, and from then to the end of the war by Dr. Schneider. Until the outbreak of war all problems concerning plants of Sparte I, insofar as they were not internal plant problems, were discussed during so-called Sparte conferences. These meetings were convened by the Sparte manager and were divided into so-called Nitrogen and Oil Sparten conferences. Dr. Buete-fisch was working on research, technical problems of development, and production, except for the Oppau plant and the Heydebreck and Waldenburg plants, the "Wifo" leased installations and the Lead tetra ethyl plants for which the Vorstand member Dr. Mueller-Cunradi was responsible.

Wherever special tasks within the Sparte or other industrial activities of Dr. Buefisch's are concerned, they will be dealt with in the refutation of the various points. Concerning Dr. Heinrich Buefisch's work the following may be quoted from the evidence:

Affiant Dr. Rumscheldt:

"He, (Buefisch) gave his attention chiefly to the development of hydrogenation and the organic plants. The organization of the plant was such that Dr. Buefisch did not concern himself with labor problems but was solely responsible for technical problems".

Bue. Doc. 78, Exhibit 23, Book II.

Affiant Dr. Knoth:

"He considered his life work to be the development of the syntheses from coal. He is well known far beyond his own sphere of activities as one of the leading experts in this field who earned a great deal of distinction in the field of technical development, the nitrogen synthesis the hydrogenation of coal, the synthetic production of alcohols and also the production of preliminary products for a variety of nylon syntheses."

Bue. Doc. 202, Exhibit 29, Book II.

Further evidence:

Bue. Doc.	200,	Exhibit 2,	Book II
" "	284,	" 24,	" II
" "	176,	" 27,	" II
" "	156,	" 135,	" VIII
" "	331,	" 250,	Supplement I,
" "	318,	" 248,	"
" "	315,	" 246,	Book VII, Supplement

Testimony Dr. Buefisch, Exhibit Page 8700-8704,
8707, 8713, Engl. page 8618 et seq.

Testimony Dr. Giesen, Exhibit page 7609, Engl. page 7547,
" Dr. Schneider, Exh. page 7387, Engl. page 7321.

Count I

Planning, preparation, beginning of wars of aggression and attacks on other countries.

The prosecution in its trial brief sub-divided count I of the indictment according to the objective and subjective definition of the crimes, and the objective definition of the crime has been ordered according to the following points of view:

- a) Pact between Farben and Hitler and the Nazi party.
- b) Farben synchronises its entire activity with the military plans of the German High Command
- c) Farben participated in the drafting of the four year plan and in the guiding of Germany's industrial mobilization for a war.
- d) Farben participated in the creation and equipment of the national socialist war machinery designed for aggressive warfare.
- e) Farben procured and stock piled war material for a national socialist attack.
- f) Farben participated in weakening Germany's potential enemies.
- g) Farben had an extensive information service and participated in espionage activities.
- h) With the approach of the war and in connection with every new act of aggression Farben participated in increased measure in the preparation and planning of such aggression and the resulting booty.
- i) Farben participated in plunder, spoliation, enslavement and mass murder as part of the attacks and aggressive warfare.

The alliance of Farben with Hitler.

The Prosecution regards the so-called alliance of Farben with Hitler as the first union with the National Socialist Party and with Hitler and his strivings for power, and it considers the meeting of two representatives of Farben with Hitler in Munich in the late fall of 1932 as a circumstance fully warranting the conclusion that such an alliance was entered into at the time between Farben and Hitler. The Prosecution bases its conclusion simply on the testimony of Dr. Gattineau and of Dr. Buetefisch

NI-8637, Exhibit 29, Book 3,
NI-8788, Exhibit 25, Book 3.

Any indication that arrangements or binding agreements between Farben representatives and Hitler were entered into is not contained in the documents submitted.

The meeting itself was ordered by Professor Bosch in the fall of 1932 in the framework of a general orientation clarifying campaign, because attacks on Germany's production of synthetic gasoline were being made in the press to an increasing degree. The course of this meeting was thoroughly described by the defendants Dr. Gattineau and Dr. Buetefisch in their testimony.

Dr. Gattineau, page 12,436 et. seq of the German transcript,
page 12,196 of the English.
Dr. Buetefisch, page 8,745 of the German transcript,
page 8,662 of the English.

This testimony shows that my client, Dr. Buetefisch, received the commission to go to Hitler in company with Dr. Gattineau merely for the purpose of giving him a technical explanation of the synthesis of gasoline. From the course of conversations it may be clearly seen that no agreements or promises were made by anyone.

Page I.

Furthermore, the re-direct examination of Dr. Gattineau (page 12,588 et seq. of the German transcript, page 12311 of the English) showed that the conversations were of a purely informative character. Additional evidentiary material:

Testimony of Dr. Krouch, page 5,461 of the German transcript, page 5,431 of the English.

Testimony of Dr. Schneider, page 7,512 et seq. of the German transcript, page 7,450 of the English.

Doc. Gattineau 45, Exhibit 53, Book III

"	"	47,	"	59,	"	III
"	"	48,	"	60?	"	III
"	"	49,	"	61	"	III
"	"	51	"	63	"	III
"	"	107	"	185	Supplement	II
"	"	108	"	186	"	II
"	"	109	"	187	"	II

Testimony of Prof. Gerlach, page 9,038 of the German transcript, page 8944 of the English.

The Leum ceremonial publication submitted by the Prosecution in connection with the cross-examination of Dr. Buete-fisch,

Document NI-16,304, Exhibit 1977

which contains a description of the visit to Hitler, is nothing more than a literary work which could be considered as a propaganda-writer's (Groiling) creation, of a feuilleton-balles-lottres nature, in the light of the German military successes of 1941, and which can make no claim to historical accuracy. Furthermore, it did not get beyond the form of a draft: at the request of the works management it was not published, because its contents did not sufficiently correspond with the facts. Only a few copies (about 25) were printed in the Works Printingshop without being released to the public as authentic material.

Evidence:

Document Buete-fisch 4, Exhibit 171, Book IV (Suppl.)

" " 3. " 170, " IV "

Testimony of Dr. Gattineau, page 12,440 of German transcript, page 12200 of the English.

Testimony of Dr. Buete-fisch, page 8,975 of German transcript, page 8886 of the English.

The further development of the "alliance", in the opinion of the Prosecution, is supposed to have been arranged in a meeting between Bosch and Hitler.

On page 33 of its Trial Brief the Prosecution says:

"In the spring of 1933, after Hitler has seized power, he invited Carl Bosch, then Chairman of the Farben Vorstand, to meet him and discuss the details of the program which Buotefisch and Gattineau had outlined."

(and in this connection it refers to Prosecution Document NI-6766, Exhibit 59, Book 3. But this Exhibit speaks only of a formal visit by Bosch to Hitler, hence it would not warrant the implication made by the Prosecution. After this conversation with Hitler Bosch had a discussion with Dr. Krauch, and on this occasion he made no mention of any agreements with Hitler.

Testimony of Dr. Krauch, page 5463 of the German transcript,
page 5433 of the English

Furthermore, agreements of such a nature would have been impossible in view of the basic principles held by Bosch.

Evidence: Affidavit by Dr. Hermann Buecher:

"In connection with the gasoline synthesis Bosch was less concerned with the fact of whether Germany would become independent of the world market by succeeding with the synthesis, or whether the process was of great significance politically or not. To him the synthesis meant an international technical-economic problem."

Doc. Schmitz 6, Exhibit 5, Book I

Affidavit by Dr. Wilhelm Ferdinand Kollo:

"Although I am not familiar with the details of the events at that time, I am able to state very decidedly, that, considering Carl Bosch's fundamental attitude - which is known to me - I think it absolutely out of the question that he, even at the price of the realization of his hydrogenation plans - was ready to co-operate with Hitler,

whose human and political attitude he completely rejected."

Doc. Schmitz 4, Exhibit 4, Book I

Since the Prosecution can give no direct proof for the so-called alliance with Hitler, it tries, on page 33 of its Trial Brief, to represent, as circumstantial evidence for its theory, the later conclusion of the gasoline agreement between Farben and the Reich Economic Ministry as a part of the arranged "business deal" in which - as is represented - Farben obtained an advantageous agreement and Hitler demanded in return a large output of the motor fuel which he need for his plans.

The following documents are cited by the Prosecution as evidence:

NI-881,	Exhibit 92,	Book 5,
NI-319,	" 93,	" 5,
NI-320,	" 94,	" 5,
NI-9477	" 512,	" 26,
NI-6530,	" 514,	" 26,

The Prosecution's evidence shows that the negotiations in connection with the agreements with the Reich had already been begun early in 1932 with the Bruening Government, at the instigation of Professor Bosch, and for purely business reasons and considerations of marketing technique. Farben did not gain any financial advantages from this agreement. On the contrary, Farben had to turn over large sums to the Reich. These amounted to 91 million Reichsmark up till 1944. The witness for the Prosecution +), Dr. Mulert, who from 1922 was in charge of the chemistry division (Referat) of the Reich Economic Ministry,

+)_ _ _ _ _
NI-9477, Exh. 513.

which included the mineral oils, said in his affidavit:

"In the years from 1932/33, as the then director of the Chemistry Division of the Reich Ministry for Economics, I took part in the guarantee agreement negotiations between the I.G. Farben Industry A.G., and the Reich with respect to the hydrogenation plant Leuna. . . . I am no longer in a position to state exactly at what time the negotiations began between I.G. Farbenindustrie and the Reich with respect to a guarantee agreement. As far as I remember it was towards the end of 1931 or beginning of 1932. . . . As far as I recall, the negotiations were conducted by both parties during this entire period only from purely economic points of view. In any event, during the course of the negotiations I never gained the impression that the conclusion of the agreement was decided through formal or practical considerations by factors other than by the purely economic-political bases as set forth which at that time had led to the inception of the negotiations. . . . It soon became evident that the agreement was quite disadvantageous to I.G. Farbenindustrie."

Further:

Testimony of Dr. Mulert, page 1,696 of the German transcript page 1711 of the English.

Affidavit of Dr. Petri:

"Beginning 1927 I worked in the Reich Ministry of Economy, as of 1929 in the mineral oil industry, from 1932 until I resigned in 1935 as official in charge of the Chemistry Division as the former associate of the then Ministerialrat Dr. Mulert. I did the preparatory work for the guarantee agreements for the production of synthetic gasoline. . . . Therefore, the negotiations dragged on for rather a long time. They were started in 1932 and were terminated in December 1933. In the meantime the Hitler government had long since come to power. This fact, had, however, no influence on the negotiations. At any rate, I for one did not observe that the NSDAP exercised any influence on the negotiations. The negotiations and work were carried out objectively and without any interference by National Socialist agencies or persons. The procedure, duration of the negotiations and the intransigence of the contracting partners prove unequivocally that a political agreement did not exist between I.G. Farben and the NSDAP. . . . The effect of the agreement was that the Reich made a good bargain. . . . If the whole situation had been better gauged, Farben would have been well-advised not to avail itself of a Reich guarantee".

Bue. Loc. 75, Exhibit 70, Vol. IV.

Affidavit of Dr. Fischer:

"The director of Farben at that time, Professor Bosch, decided

therefore, to entrust the public relations department of Farben with the task of refuting the arguments of their adversaries, which were in part quite void of any objectivity, through technical and industrial enlightenment with respect to gasoline hydrogenation.Not until some time during 1933, on the occasion of a discussion with Dr. Buete-fisch, did I learn that in connection with this matter a visit had also taken place in autumn of 1932 with Hitler. However Dr. Buete-fisch never informed me of any guarantee or promise on the part of Hitler or his Party regarding the gasoline hydrogenation program, although such an expression could have been favorably exploited in the sales campaigns. Similarly, during the negotiations concerning the proceeds guarantee for Louisa gasoline, which later led to the conclusion of the gasoline guarantee agreement between the Reich and Farben, such an argument was never brought forth either by Dr. Buete-fisch or by any other representative of Farben.On the other hand the Reich strived above all, because of savings effected in foreign currency, to increase German gasoline production. Such negotiations were a part of the development under way at the time. Because of the sales and proceeds of their products the benzol and distilling industries had already conducted negotiations with the competent Reich authorities. Both industries had achieved satisfactory results in this respect. Therefore, it was natural that Farben should also enter into such deals with the Reich in 1932. After I had become a member of the Vorstand of the Deutsche Gasolin A.G., I took charge at the beginning of 1933 of these negotiations for Farben." Doc. Buete-fisch 196, Exhibit 68, Book IV.

Additional evidentiary materials:

Doc. Buete-fisch 10, Exhibit 71, Book IV,
 " " 109, " 72, " IV.
 Testimony of Dr. Buete-fisch, page 8748 of the
 German transcript
 page 8666 of the English

This agreement with the Reich was then signed, in December 1933, by the Farben Vorstand, specifically, Geheimrat Bosch and Geheimrat Schmitz. Feder, the new State Secretary in the Economic Ministry, signed for the Reich, and later, on his own initiative and without participation of Farben, he submitted this agreement to Reich Chancellor Hitler. Feder was not the originator of the agreement, however, and he had taken no part in it, but was chiefly concerned with other plans.

Affidavit of Freiherr von Lo Roche-Starkenfels:

In 1932 I prepared a brief concerning the German mineral oil industry. This was motivated by the factors of providing work for the extremely logging machine construction industry and the conservation of foreign exchange funds .. In 1933 Professor Dr. Ubbelohde turned over this brief to State Secretary Feder. We discussed with Feder in detail the pros and cons of the suggestions put forth, which were directed towards an immediate as well as a long-range program. In connection with a conference in the Reich Chancellery Herr Feder was requested by Hitler to implement the mineral oil program through the import of crude oil in exchange for commodities, in accordance with our brief, and to make available the necessary oil refinery plants

Not until later that year - I do not remember the exact time - was I informed by the Reich Ministry for Economics and the Farben people that for technical-industrial reasons priority would be given in the future to the coal hydrogenation as against my plan. I cannot conceive, however, that the highest quarters of the Reich Ministry for Economics would have carried on serious negotiations with me with respect to my project and began to put it into effect if at that time they had already obligated themselves to Farben, through prior agreements." Doc. Baetefisch 208, Exhibit 67, Book IV.

Additional evidence:

Doc. Baetefisch 196, Exhibit 58, Volume IV.
From Prosecution Document NI-6530, Exhibit 514, Book 26, the Prosecution quotes on page 33a of its Trial Brief, a passage of a speech which my client Dr. Baetefisch made in 1938 before the employees on behalf of Dr. Schneider, the Betriebsfuehrer (Plant Leader). The sentence quoted shows nothing more, in effect, than the fact, as it took place in 1933, that Farben received instructions late in 1933 to bring its production up to the agreed level, in accordance with the concluded guaranty agreement. The reasons are sufficiently shown in the submitted evidence.

Testimony of Dr. Baetefisch, page 8789 of the German transcript, 8711 of the English; also p. 8979 of the German and 8889 of the English.

Bas I

The Prosecution also tries to create the impression, on page 33 of the Trial Brief, that Farben had to enter into the alliance with the Party in order to balance its losses in connection with the development of the hydrogenation process, and for this purpose it cites

NI-6765, Exhibit 31, Book 3,
NI-7319, " 519, " 26,
NI-9922, " 522, " 26.

The terms of the gasoline agreement concluded with the Reich Government which were not very favorable to Farben, are themselves enough to rebut this supposition. Beyond that, however, the documents submitted by the Prosecution really do not refer to losses, but to outlays by Farben; for example, the sum of 366 million marks mentioned in NI-9922, Exh. 522 is purely a bookkeeping summary of all the costs in connection with the development of the Hydrogenation process up to 1935, without the items on the asset side corresponding to these costs.

Evidence: Doc. Bas. 218, Exh. 69, Book VI
" " 295, " 185, " VII
Testimony of Dr. Bas. page 8919 of the
German transcript,
page 8833 of the English; also
page 8980 of the German and page 8890
of the English.

Hence, the uncovered expenditure for the development of hydrogenation until 1932 was in the region of 180 million RM at the most, from which the value of the factory installations for the production of 350 000 tons of gasoline is still to be subtracted. But even if this subtraction is not made, development costs on this scale are nothing unusual for Farben. They were regularly incurred by Farben for developments in new fields. Thus, from 1927 to 1932 Farben expended 642 million Reichsmark for scientific and experimental work, of which 146 million Reichsmark were used for the experimental and developmental work on hydrogenation.

(Document ter Meer 59, Exhibit 45, Book III)

The Prosecution's theory of an alliance is also in contradiction to the fact that, according to the evidence of the Defense, the technical difficulties of the hydrogenation process were surmounted in 1932, so that for this reason, too, there was no reason for Farben to seek the help of the NSDAP.

Doc.Buo. 79, Exhibit 11, Book I,
 " 71, " 57, " III,
 " 130, " 58, " III,
 " 196, " 68, " IV.

Testimony of Buetsch, page 8,744 of the German transcript
 page 8,652 of the English.

Prosecution Document NI-922, Exhibit 522, Volume 26.

Further counter-evidence to refute the alliance theory of the Prosecution is the fact that other German firms, which, after Farben, likewise concluded guarantee agreements with the Reich for their motor fuel production obtained more favorable terms than those contained in the Louna agreement for Farben.

Evidence:

Doc.Buo. 10, Exh. 71, Book IV,

Doc.Buo. 344, Exh.274, Supplement to Volume III.

The particulars concerning the meeting with Hitler and the gasoline agreement, as well as the Prosecution's allegations in this connection, which are given under a) in its Trial Brief, have been considered first here because they refer to a transaction which was concluded before Dr. Buetevisch became a member of the Farben Vorstand. I have dealt with these points here, because Dr. Buetevisch, as the Farben technical official in charge of the mineral oil division, has taken it upon himself to show the facts and background in this field.

In my further statements with regard to Count 1 of the Indictment I shall consider the parts of the Prosecution's theory given under b) to f) in the Trial Brief, so far as they affect the sphere of activity of my client, Dr. Buetevisch. Accordingly, I have to consider mainly the three products, nitrogen, methanol and mineral oil, and in this connection I shall examine the charges of the Prosecution with reference to each of these three products; in so doing I shall adhere as far as possible to the above sequence b) to f).

I need not consider the charges, made by the Prosecution under g), of propaganda, intelligence and espionage activities, because these Counts of the Indictment do not apply to my client and consequently no evidence to incriminate him was submitted in this regard.

N i t r o g e n . -----

The prosecution does not present in this field any substantiated evidence but generally limits itself to generalized statements of which a few will be dealt with here for the sake of clarification. It is alleged for instance that Farben had excessively increased their production of nitrogen, pushed Chile out the world's markets and had striven for a monopoly.

Prosecution evidence: Doc. NI-7743 Exh. 592, Book 33

" NI-8313 " 325 " 12

" NI-9049 " 593 " 33

* testimony of Elias, transo. German page 719 and following Encl. p. 751.

The prosecution document listed first proves in itself that from the Haber Bosch process similar processes for the production of synthetic nitrogen developed so that neither inside nor outside of Germany had Farben a monopoly. The evidence of the defense shows that the crowding out of Chile was not brought about by Farben but by the fact that all industrial nations increased their nitrogen capacities over and above their own needs; the result was correspondingly decreased export possibilities for the original-nitrogen producers, i.e. not only for Chile. Thus also the production of Farben up to the second world war never again reached the peak of 620 000 to Nitrogen attained in 1928/29.

Evidence: Doc. Bus. 104 Exhibit 5 Book I

" " 107 " 7 " I

Doc. Schneider 114, Exh. 16, Book VIII

Testimony of Dr. Schneider, transo. German p. 7405 et seq. English p. 7441

Testimony Bus, transo. p. 8724 et seq.

Engl. p. 8641.

Bue I.

While the first of the above mentioned documents shows the development of Germany's Farben's and Chile's, sales the second one shows that as from 1932/33, not one of the important industrial countries had any further need to import nitrogen, but that all had superfluous capacity. In the year mentioned, for instance, the superfluous supplies of the European countries, with the exception of Germany, amounted to around 750 000 tons of Nitrogen, that is the full capacity of Chile or three times as much as the consumption at the time in USA and Canada.

The allegation of Farben's German Monopoly is disproved by

Doc. Bue. 81, Exhibit 6 Book I,
which shows that Farben supplied only about one half of the German sales of nitrogen.

Doc. Bue. 49 Exhibit 42, Vol. II, which was also presented by the prosecution as NI-15080, Exh. 2121, refutes the allegation that Farben's Nitrogen capacity was excessively large for it proves that already in 1938 only with difficulty was production able to keep pace with requirements. But the already mentioned document Bue. 104 shows that the increase concerned chiefly fertiliser nitrogen, as is shown by the advance estimate made in August 1939 for the nitrogen requirements for the next 5 years.

Prof. Dr. Schulze says in his affidavit:

"After the rapid rise in the consumption of fertilisers during the years 1935-1939, the future requirements of German agriculture in nitrogenous fertilisers were discussed with the nitrogen industry during the spring or summer of 1939, to my recollection, in order to facilitate a plan for the production of nitrogenous fertilisers on a sufficiently secured basis. As I no longer have any documentary data at my disposal I am unable to give details. According to my recollection the needs of German agriculture were estimated for several years ahead and a considerable annual increase in consumption allowed during this time."

Doc. Bue. 2 Exhibit 41 Book II.

Further evidence:

Loc.Bue.111, Exh. 43, Book III,
 Doc.Schneider 116, Exh.14, Book 8,
 Testimony of Dr.Schneider, transo.page 7409 English
 page 7345.
 Testimony Dr.Bue.Transcript page 8730, English p.8645,
 Loc.Bue. 12 Exh. 45 Book II
 " " 243 " 47 " II

The Prosecution attach great importance to technical nitrogen
 and see in the production of highly concentrated HNO_3 (Nitric Acid)
 a pure preparation for war, by equalling it to the production
 of explosives.

Prosecution Document NI-5668, Exh.127, Book 5, 30-144, Exh.602,
 Book 34, Testimony Elise, Transcript page 1347, English page 1370,
 Testimony Morgan, Transcript page 720, English page 752.

The first document is disproved by

Loc.Schneider 116, Exhibit 14, Book VIII.

The Evidence of the defense further proves that technical nitrogen,
 for the most part, serves peaceful purposes and that requirements
 for military, explosive purposes, up to the war, was less than
 3% of the total sales of nitrogen, so that changes in these require-
 ments did not appear when seen as a whole.

Evidence:

Loc.Schneider 158, Exh. 13, Book VIII
 Testimony Schneider, Germ.transo.page 7416, Engl.7351
 " Bueteofisch " " " 8728/30, " 8644
 Loc.Bue.104, Exh.5, Vol. I
 " " 106 " 8, " I
 " " 311 " 192 " VII

Therefore it is also unimportant if the prosecution in the cross
 examination of the witness (transcr.German page 11440, English
 page 11312) endeavored by a combination of prosecution documents

NI - 14 232, Exh. 2309
 NI - 14 234 " 2310
 NI - 14236 " 2307

to prove that the German consumption of technical nitrogen in 1938/39 was 5 times that of 1928/29. Since for this proof, in addition, wrong suppositions on the amount of exports and on the relation of the domestic and foreign pieces were made, the witness quite rightly did not recognize the result of those calculations. (Transcript German page 11442, English page 11314).

In contrast to the statements of the prosecution witnesses it is not quite easily possible to convert fertilizer nitrogen capacity to the production of highly concentrated acid-highly concentrated nitric-acid-needed for explosives, since for this very extensive installations are needed which take a long time to build.

Evidences:

Doc.Bue. 257, Exhibit 44, Book II
 " " 301, " 189, " VII

Prosecution document 80-144, Exhibit 602, Book 34 mentioned in the Trialbrief on page 28a, which, by the way, in contradiction of the remark of the prosecution, is not a Farbon file note, but probably originated from some ministerial office, alleges a tenfold increase of the German capacity for highly concentrated nitric acid between 1932 and 1938. This is already repudiated by prosecution document NI-10580, Exhibit 616, Book 34 (strategic bombing survey) which registers only a 2½-fold increase of the German capacity for highly concentrated nitric acid.

The fact stated by the prosecution that in Germany, by order of the army high command, so called highly concentrated acid emergency installations or shadow factories were built, did not permit in view of the capacity for Farben attained by the outbreak of war, the conclusion that those installations were destined for a war of aggression.

Evidence:

EC-144, Exhibit 602, Book 34
 Doc.Schneider 155, Exhibit 19, Book VIII.
 " " 156, " 20, " VIII.
 Testimony Schneider, Exh.Germ.7411, Engl.7347.
 " Buete fish, " " 8728, " 8644.

Moreover shadow factories were erected by the European nitrogen industry in almost all countries, as for example in England.

Evidence:

NI-7965, Exhibit 923, Vol. 49
 Doc.Schneider 115, Exhibit 21, Vol. VIII.

The pure production development of Farben in the nitrogen field has nothing to do with the planning of the 4 year plan since there was no further expansion in production in relation to the position in 1926.

Evidence:

Doc.Schneider 158, Exhibit 13, Book VIII.

The later expenses and investments in the nitrogen field involved mainly only replacement requirements and the modernisation of the installations.

Testimony of witness Struss, transcript page 429 English 4101 as well as for the demands by agriculture for modern fertilizers.

Evidence:

Doc.Bus. 2 Exhibit 41, Book II,
 " " 78, " 23, " II

Therefore it is hard to recognize how Farben's special production organization for nitrogen could have served the creation and equipping of the national socialist war machine for aggression.

Prosecution document

NI-7133, Exhibit 1074 Book 52, on all nitrogen plans of Farben in Austria in 1938, contrary to allegations by the prosecution in the trial brief was not written by Dr. Buestefisch. The document is explained by the affidavit of Guenther Schiller in which it is stated:

"If there had been positive negotiations concerning nitrogen and hydrogenation schemes at that time I am sure I should remember. The reports mentioned in the note should normally have been forwarded through me. But I do not remember this either".

Loc.Bue.514, Exhibit 106, Book V, (Supplement)

Further also testimony Dr. Bue., transcript page German 8/94, Engl. 8/16.

A weakening of the nitrogen industry of Germany's potential enemies is disproved already by the development of the nitrogen industry of all European countries and of America.

Evidence:

Loc.Bue.107, Exhibit 7, Book I.

Furthermore, however, in contradiction of prosecution documents

NI-7745, Exhibit 611, Book 34 and
NI-10784, " 1018, " 43

Farben licensed her nitrogen process especially for the processing of ammonia to finished products to the whole world and thereby issued at least 45 licenses. If among these there were only a few licenses for primary ammonia production it is only for the reason that

a number of modified Haber-Bosch processes had been developed in the world.

Even after the outbreak of the second world war licenses were still issued to USA and additional ones negotiated.

Evidence:

Loc. Bus. 105,	Exhibit 107,	Book V
" " 48,	" 108,	" V
" " 36,	" 109,	" V
" " 37,	" 110,	" V
" " 38,	" 111,	" V
" " 39,	" 112,	" V

Testimony Dr. Bueckele, Exh. 107,	German page 8801,
	English page 6722,
Dr. Schneider, " 108,	German page 7428,
	English page 7363.

Summary:

It has been clearly proved by the evidence of the defense that the accusations of count I of the indictment do not apply to the main product of Sports I of Farben, synthetic nitrogen and to Farben's work in the nitrogen field.

M e t h a n o l .

Owing to the lack of substantiated allegations concerning this product the indictment on page 31 calls methanol a particularly important war product and refers to the US Strategic Bombing Survey.

NI-3767 Exhibit 715 Book 37
and the testimony of the witness Elias. (German transcript page 1349, English page 1374).

If this is intended to mean that Farben and its responsible leaders developed methanol production for the planning of aggressive wars, then the fact that methanol production had already been started by Farben in Leuna as early as 1923 and the amount of production reached in 1936 was generally kept at the same level up to the outbreak of war speaks against this. The product was taken over completely by civil economy especially because the price was very favorable and it was suitable for new uses in the field of artificial resins.

Methanol was not used prior to 1939 to any considerable amount for the production of explosives. Sparte I and also the defendant Bueterfisch never worked on the production of explosives from Methanol.

Evidence: Doc. Bue. 80, Exhibit 9, Volume I
228, " 10, " I

Testimony Dr. Bueterfisch, Transcript page 8733
English page 8649
Dr. Schneider Transcript page 7421
English page 7356

The above mentioned witness Elias who, as prosecution expert made critical statements on the main productions of Farben has hereby, according to his own statements, relied chiefly on the reports of the Enemy Oil Committee and of the Strategic Bombing Survey

and made the opinions stated there his own. Both reports were written only or indeed mainly in consideration of strategic points of view. Viewed from this angle the economic causes for the development of production conditions in Germany are not at all or insufficiently considered. Also Herr Elias did not deal with them. His statement, therefore, does not merit the character of an individual source of knowledge in addition to the reports which he reiterated. According to the evidence available also in the case of Methanol it is not possible to speak of Farben synchronizing its activities with the plans of the Army High Command or participating with this product in the 4 year plan or in industrial mobilization. For Methanol there is just as little proof for the other accusations of Count I of the Indictment.

In connection with Methanol the prosecution also mentions in its trial brief on page 32 the synthetic production of Toluenol from Methanol for which they give the following evidence:

Prosecution document NI-8790, Exhibit 609, Book 34,
Testimony Elias, Transcript Page 1350, English
Page 1375.

In fact, however, this production which was only an emergency measure which was not instituted until the war and then not by Farben but by the Weir.

Evidence:

Dec. Schneider 156, Exhibit 41, Book 8
Testimony Schneider Transcript Page 7410, English
Page 7346
Testimony Buetefisch, Transcript Page 8734,
English Page 8650.

Mineral oils

(Benzine and lubricants)

Starting from the petrol contract between Farben and the Ministry for Economics which was already dealt with in pages 12-16 of this statement, the prosecution in the trialbrief, page 34, tries to explain that the production of synthetic mineral oil in Germany and especially the hydrogenation process developed by Farben had as its aim the mobilization of Germany for war. They apparently base this on the thesis that every technical process which is developed for the production of important consumer goods from a country's own raw materials serves the purpose of starting up the war machine of a nation. The prosecution in this considers the synthetic production of mineral oil from coal a typical example by trying to prove that this production in Germany was uneconomical and therefore could not serve any other purpose than that of a planned war. They therefore quote from the report of the Enemy Oil Committee on page 35 of the trial brief:

"The outstanding feature of German oil economy during the past ten years has been the spectacular development of the synthetic oil plants for the production of oil from coal. This attempt at complete oil autarchy, made without regard to cost or orthodox financial considerations, has no parallel elsewhere and is a striking example of the character of the German master plan for world domination which called for the production within her own boundaries of all the resources essential to modern warfare."

Document NI-10507, Exhibit 544, Vol. 27,

This prosecution document reads further:

"A detailed history and an accurate economic appraisal of the synthetic

oil industry is rendered difficult by the fact that, almost from its inception, the Germans realized the potential strategic importance of this industry, with the result that all but its broad outlines were closely shrouded in a cloak of secrecy."

This report of the enemy oil committee looks upon the development of an important technical problem, in retrospect only from the political angle and couples it with the plans of the military high command.

The evidence of the defense on the other hand shows the clear organic stages of development with the technical and economical reasons which led to the development of the processes for the production of synthetic mineral oil. It further shows that the production of mineral oils for the general use of economy from heavy hydro carbons and coal was not only a German problem but a world economic problem. Its chemico-technical work was started by various nations of the earth at almost the same time and has been solved in mutual cooperation.

CLOSING BRIEF BRETHERICH

The documentary evidence again shows irrefutably that there was no connection between the scientific, technical and economic development of the mineral oil problem in Germany on the one hand and political events with which the Prosecution is attempting to correlate them on the other. As early as 1923 already Farben took up its work in the pursuit of goals which are clearly seen from the documentary evidence, as a result of its research work erecting its large-scale plant in the year 1926. There is nothing to support the thesis of the Prosecution that Farben and its responsible technicians carried out this work with the intent thereby to permit Germany the carrying on of war or of aggressive war, or to bring it about. Much rather was the technical progress and the economic application of the processes the motive for Farben's development work. This also was the purpose of Farben's collaboration with American and English firms at whose disposal it placed its experiences and developments in the field of mineral oil, for the benefit of world economy as a whole. *)

Proof:

Already in one of the first oil discussions (on 1 September 1930) Dr. Piar reports:

"In conclusion I would like to add that the cooperation with the Standard Oil Company has developed in an absolutely satisfactory manner It must be considered, however, that in essence Farben has been and is in this essentially the one who gives..."

Doc. Book Bretterfisch III, page 6 English text, Doc. Buc 52, Exh. 48.

During the oil discussion on 26 September 1933 it is reported that the Ruhr industry and the Central German soft coal industry are interested in hydrogenation, and that ICI (Imperial Chemical Industries, London) are in contact with IG on that subject.

Doc. Buc. 114, Exh. 49, Book III.

*) For further information on this subject see page 53 and following

CLOSING BRIEF BUSTEFISCH

In the Tea (Technical Committee) meeting of 15 February 1934 Dr. Bustefisch reports that as a result of the hydrogenation expansion in Leuna the major portion of the Nitrogen primary plant which was shut down will be included again in the manufacturing process.

Doc. Bk. Bus. III, Bus. Doc. 120, Exhibit 51

The well known coal industrialist Stirmer says, among other things:

"I am convinced that the achievements of Farben in the field of coal processing for the manufacture of mineral oils can be evaluated only as substantial contributions to an industrial technical problem in the solution of which also other German institutes and enterprises participated. If then the coal liquefaction processes, and in particular the Farben method has been adopted by industry then this is a proof of the fact that an economic solution for German conditions has been found in the problem of mineral oil manufactured from coal."

I mentioned already in the beginning that the processing of coal is a problem for Germany, and probably even for the world..."

Doc. Bus. 303, Exh. 136, Bus. Doc. Bk. III

In a lecture before the Institute of Fuel, the English industrialist Kenneth Gordon stated:

".....

He was to Bergius the conception of the hydrogenation of coal to give oil. His experiments started before the war, and ended with a small technical plant at Rheinau, near Mannheim, which was in operation until 1927.

.....

Experimental work at Billingham started early in 1927, and in 1929 it was decided to build a pilot plant to treat 10 tons per day of coal. This plant was started up later in the same year, and ran until the end of 1931. It was the first plant to hydrogenate bituminous coal on the scale of a commercial sized unit for any prolonged period.

.....

In July, 1933, the Government announced their intention to guarantee the continuance of the preference on light oils made from indigenous materials for a period of years, by means of the British Hydrocarbon Oils Production Bill. This enabled the Director of the I.C.I. to decide to proceed with the erection of a plant at Billingham.

.....

This increased the capital requirement to £ 3,000,000. The value of the existing plant used is £ 2,500,000, making a total of £ 5,500,000.

.....

CLOSING BRIEF BUSTEFISCH

The building of the plant at Billingham involved a very large increase in the staff and labour "

.

Doc. Bus. 281, Exh. 55, Book III.

In the transcript of the oil conference of 22 December 1937 a synopsis is given on the various other processes for fuel supply which shows that not only Farben and not only Germany did work in that field.

Doc. Bus. 116, Exh. 56, Book III.

A publication in the magazine "Four Year Plan" on the Hydrogenation Plant at Pöhlitz proves that these plants in Germany were not kept secret at all.

Doc. Bus. 29, Exh. 60, Book III.

Other exhibits are:

Doc. Bus. 79, Exhibit 11, Book I	
" " 54 " 50 " III	
" " 53 " 52 " III	
" " 115 " 53 " III	
" " 115 " 54 " III	

Testimony of Dr. Bustefisch, German transcript 8737, Engl. text page 8653.

To the contention that the production of oil from coal was pursued without considering the economic angle, and that the investment expenditures for synthetic fuel and lubricating oil were 10 to 30 times higher than for the production from natural petroleum, as brought out by the Prosecution in

NI- 10 507, Exhibit 54, Book 27,

Testimony Elias, transcript, German p. 1351, Engl. p. 1376

the Defense, wishes to point to the following:

An exact list of the costs shows that as early as 1932 the cost for Louisa gasoline was below the comparable cost of imported gasoline in Germany

CLOSING BRIEF BUNTFISCH

while the import duty for gasoline had not changed since 1930:

Doc. Buc. 181, Exh. 13, Book I
" " 180 " 14 " I

A model calculation applied to normal conditions arrives at a price of 12 to 14 Pfennig per liter of gasoline obtained through hydrogenation; the Farben books also reveal that the cost price in 1943 actually did amount to 13.6 Pfennig per liter.

Doc. Buc. 110, Exh. 15, Book I
" " 185 " 16 " I

Finally, an expert expressing himself on the cost of installing a hydrogenation plant states that it amounts to only about twice the cost of a crude oil processing plant of equal capacity; both calculations specifically adapted to German conditions.

Doc. Buc. 328, Exh. 251, Supplement to Book I.

Additional evidences:

Testimony of Dr. Buc. transcript, German p.8741,ff.
Engl. page 8658.

From this the Prosecution infers that Farben made its process and its experiences available not only to foreign countries but also to the German economy, thereby supporting the National Socialist government. In this connection it quotes:

NI-3976, Exh. 517, Book 26;
NI-7869 " 518 " 26,
NI-7767 " 521 " 26.

and it states in its Trial Brief, page 34:

" Farben was one of the first co-founders of Brabag (Braunkohlen Benzol A.G., Berlin) and obtained for that company the license for its hydrogenation patent."

In that respect the Prosecution stresses in particular the presence of General Beckelberg who purportedly had been called in as the representative of the Wehrmacht and as Chief of the Army Ordnance Office.

CLOSING BRIEF BUETEFISCH

The Defense, in turn, submits that the founding of Brabag was brought about by virtue of the enactment of the Economics Minister Schacht on the Compulsory Syndicates, and that Farbion was incorporated in this against its will. This involved a Reich measure of strictly economic character taken primarily for reasons of foreign currency. The Wehrmacht was in no manner participating in the creation of the Braunkohlen-Benzin A.G. (soft coal gasoline, incorporated) and its license agreement with Farbion; the visit of General Liese in Loune, referred to as evidence, was nothing more than one of the many plant inspections as were customary at all times, there as well as in other industry branches. General von Boeckelburg, on the other hand, had already left the Wehrmacht when the Brabag was founded.

Proof:

Affiant Hans Erich CHUEHN states in his declaration:

"The Brabag was founded at the urging of SCHACHT in October of 1934, by virtue of the law concerning the creation of the compulsory syndicates of the soft-coal industry.

... Von BOECKELBURG was from the Wehrmacht but had left it some time before the Brabag was founded and was a civilian member of the Vorstand ..."

Doc. Buc. 293, Exh. 78, Book IV.

Other evidence:

Doc. Buc. 268, Exhibit 73, Book IV,
" " 90, " 74, " IV,
" " 262, " 163, " VII.

Testimony of Dr. Krauch, transcript German p.5068,ff. Engl.
page 5047,

" " Dr. Buetefisch, transcript German page 8755,
English page 8674.

Other hydrogenation plants in Germany likewise were founded because of economic considerations. As early as 1927 the first consultations on this took place with interested German industry groups from which definite

CLOSING BRIEF BUEFISCH

projects were developed in the course of the years.

Proof:

The Managing Director of Hibernia (Hibernia Mining Co.) has this to say:

"...The plans of the Hibernia to participate in some manner in the production of liquid fuels from hard coal go back to the middle of the nineteen-twenties In the method of hard coal hydrogenation there seemed to be a solution for this problem As a result of this in 1925 the first experiments in the liquefaction of coal were undertaken with Hibernia coal according to the Bergius process....The first commissions for the construction of the plant in Scholven.... were distributed at the beginning of 1935 From this development it may be seen that the founding of Hydrierwerk Scholven A.G. and the putting of the plant in Scholven into production were neither a special result of National Socialist industrial policy nor a conscious preparation for war. For the management of the Hibernia it was merely a matter of meeting the business slump by a profitable utilization of low-grade fuels and inferior coal."

Doc. Buc. 55, Exh. 60, Book IV.

Also the manager of the Gelsenkirchen Bergwerke A.G. states as follows:

"Already many years before World War II the Ruhr mining industry was at work on the problem of producing gasoline from hard coal. Its aim was to achieve the best possible utilization of its coal as mentioned above, technical and economic reasons were decisive for choosing the Farbon process for the gasoline plant in Gelsenkirchen-Horst."

Doc. Buc. 19, Exhibit 61, Book IV.

Also the Ruhr industrialist Hugo Stinnes, of whom mention was made previously already, states about the reasons of his firm for constructing a hydrogenation plant:

"Reasons of economy plus the knowledge gained after 1919 led to the development of its own processes which the responsible management of the Matthias Stinnes Colliery had set as its goal in order to raise the market value of the coal mined and to obtain derivative benefits."

Doc. Buc. 305, Exhibit 188, Book VII.

Additional evidence:

Doc. Buc. 114, Exh. 49, Book III
" " 5, " 82, " IV
" " 15, " 83, " IV
" " 285, " 184, " VII

CLOSING BRIEF BUETEFISCH

Testimony of Dr. Bueteifisch, transcript German page 8587 ff,
Engl. page

If, in the report of the Enemy Oil Committee

NI 10 507, Exh. 544, Book 27,

the assertion is made that the share which German mineral oil companies with international connections had in the synthetic oil industry was small and if this report lists only German firms as stockholders of Hydrogenation Werke Poolitz this is being refuted by the examination of Dr. v. Knielism, on 21 April 1947, which is incorporated in Doc. NI-7319, Exh. 519, Book 26, Additional documentary material:

Doc. Eng. 15, Exhibit 83, Book IV
" " 162, " 17, " I.

Testimony of Dr. Bue., transcript German page 8811, Engl. p. 8734.

For the field of fuel its participation in the Four-Year-Plan or a synchronization of its activity with the planning of the German High Command cannot be incriminating for Farben as, quite aside from the question as to whether the preparation of a Four-Year Plan and conversations of the industry with Wehrmacht branches for special technical fields can per se be construed as criminal acts, it follows from the documentary evidence of the Defense that the gasoline production of the Leuna plants already in 1933 was by contract^{scheduled} for a volume of approx. 350,000 tons; in other words it had nothing to do with the Four-Year-Plan. In 1936, when the Four-Year-Plan was announced, it amounted to 332,000 tons, and in the year of 1938 to 359,000 tons while during this period

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no changes in construction had been made.

Proof:

Doc. Buo. 20 Exh. 12, Book I,
" " 102, " 19, " 1

If in the Prosecution evidence

NI-10035 Exh. 428, Book 32
NI-10036 " 429, " 32

the contention is made that in the official planning of the Four-Year-Plan investments amounting to 967 million Reichsmark had been proposed for Farben for the four years (or approximately 380 million for the period of October 1936 to May 1937) there is no way for arriving at this result except the respective affidavit computed by mistake the investments of the licensees of the hydrogenation process to Farben. The actual Farben investments for mineral oils, including expenditure for replacements and improvements, amount to approximately 60 million Reichsmark in the years of 1936 to 1939. In this connection it should be remembered that for the existing plant the current maintenance expenditure alone amounted to approximately 10 million RM per year.

Proof:

Doc. Buo. 287, Exh. 40, Book II,
Testimony of Dr. Bustefisch, transcript German p. 6720,
English page 6637.

It also should not be incriminating for Farben that in the course of the Four-Year-Plan other interested companies turned to hydrogenation. For such planning Farben was merely gave the license and the technical advice. As far as the Four-Year-Plan Office was brought into this, this was the affair of the licensees, not Farben. It was a matter of course from the viewpoint of economies that upon request Farben made available licenses and technical

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experience since already before she had done both on an extensive scale for foreign countries.

As a proof for Farbon cooperation with the German Government the Trial Brief on page 34 sets forth that the Reich has furthered the production of synthetic gasoline through the grant of special tax reductions, etc.

NI-355	Exh. 525	Book 20,
NI-357	" 527	" 28
NI-358	" 528	" 28.

An examination of this documentary evidence reveals clearly that in connection with these measures one did not have the production of synthetic gasoline in mind at all but governmental promoting of other indigenous mineral oil products (benzene and benzine obtained through low temperature distillation).

Testimony of Dr. Dietfisch, transcript, German page 8700,
English page 8700.

In order to prove that the synthetic mineral oil production was organized for war purposes the Trial Brief on page 34 continues as follows:

"The fuel oils and lubricants produced vary from those which are customary in peacetime."

Testimony of the witness Elias, transcript German page 1368, English page 1367.
NI-7298, Exh. 516, Book 36.

This is not at all correct as far as the synthetic production up to the outbreak of the war is concerned; it supplied normal industrial fuel oils.

Proof:

The affiant Dr. Rumschmidt states:

"The production of the Leuna Works before the war was exclusively directed to economic consumption. The main products were nitrogen fertilizer for agricultural uses, .. and gasoline for the economy and for aeronautics. All these products served the peacetime economy."

Doc. Exh. 70, Exh. 23, Book II.

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From the affidavit of Dr. Roschwendler, member of the Brabag Vorstand:

" I can definitely aver that the Brabag Vorstand did not expect nor anticipate that the Brabag plants had been built for war purposes, let alone for an aggressive war. We always endeavored to secure the normal demands of the automobile industry and traffic.

Doc. Buc. 100, Exh. 75, Book IV

Hans Erich CHUBERN already referred to before states:

" The entire production of the Brabag served the normal requirements of industry and was disposed of via the trading companies operating in Germany".

Doc. Buc. 293, Exh. 76, Book IV.

Another quotation from the affidavit of Hugo Stimmos:

" To my knowledge, these above mentioned considerations of private enterprise induced several mining industrialists before the war to construct plants for hydrogenation, but certainly not with the intention to bring about preparations for warfare with this new kind of industry."

Doc. Buc. 303, Exh. 185, Book VII.

Additional documentary material:

Document Buc. 55, Exh. 80, Book IV

" " 15, " 83, " IV.

Testimony of Dr. Buettelisch, transcript, German page 8759,
English page 8579.

The Prosecution contends that by reason of the general developments in the field of mineral oil and from the increase in synthetic production Farben should have recognized the policies and the intentions of Hitler in regard to a war of aggression and that, consequently, it approved and supported those intentions. It quotes for that purpose on page 34 and 35a of the Trial Brief its documents:

NI-5380 Exh. 400, Book 19

" -8327 " 56, " 5.

"In modern war the consumption of gasoline for motorized troops, tanks and air plans is enormous."

. . . and a report of the Military Economy Staff of the OKW:

"Mineral oil is just as essential for the conduct of modern warfare as aeroplanes, tanks, ships, arms and ammunition."

Similar statements are also contained in NI-8318, Exhibit 542, Book 27.

One cannot designate the building of a fuel industry from domestic raw materials which was undertaken out of compelling economic considerations, a criminal activity (Beginnen) simply because of those generalities which, moreover, are taken from files unfamiliar either to Farben or to my client, Dr. Baetefisch. Those irrelevant ideas of the prosecution, however, show how completely it misjudged the then existing situation in the mineral oil sector of Germany. Hardly any other product in the consumers'-good industry in Germany is more suitable, in its production development, to show that it would be impossible with a thorough knowledge of the conditions of this branch of industry, to arrive at the conclusion that the German government harbored aggressive intentions. In 1933 Germany's consumption of mineral oils was 3,375 million tons, its domestic production was 915,000 tons; in 1938 consumption amounted to 7.3 million tons with a domestic production of 2.7 million tons. Here the proportion of synthetic production has risen from 0.1 to 1.0 million tons, while the import of finished products and raw materials had increased from 2.57 million tons to 4.85 million tons, i.e. by 2.3 million tons, or in financial terms, from 116.9 to 251.2 million Reich Marks, an increase of 130 million Reich Marks. Every clever thinking economist must have known that even with the further expansion of synthetic installations,

production would always lag behind the foreseeable consumption, since the number of motor vehicles in Germany as compared with other countries and the current construction of the German Autobahn net-work, promised further upward developments. Thus, at the beginning of the war, it had not become possible to cover even 50% of the normal mineral oil requirements of the German economy. Even the import of light motor fuels (gasoline) which were preferably produced synthetically, had risen from 790 000 tons in 1933 to 1 000 000 tons in 1938.

Evidence:

"Statement of the former director of the mineral oil department in the OKW:

"German production of mineral oil, including the production from crude oil produced in Germany, was absolutely inadequate for war time demands. According to my recollection, it was not even able to satisfy 50% of the normal demand of peace-time economy. Imports were uncertain because of the shortage of foreign currency existing in Germany. If the mineral oil industry was issued directives to increase production, this could not be construed by the managers of the plants to show that the government had intentions of waging a war of aggression.

Doc. Bue. 221, Exh. 62, Book III.

Statement of a former Referent in the mineral oil department of the Economic Ministry:

"The situation of the German mineral oil economy was marked on the one hand, by a steadily increasing demand resulting from increasing motorization, which had to be met, and, on the other hand, by the fact that production possibilities were too weak to preclude an augmenting of the imports. With respect to imports, however, we were dependent on a shrinking amount of foreign exchange and on tightening import markets. Thus, it was a dictate of necessity, and, moreover, one of a purely peace-time economic nature, to step up the production from domestic raw-materials as much as possible. We co-workers

of the Reich Ministry of Economics and of the industry, in any case, were not under the impression, that the quotas which we had to allocate to industry were meant for the preparation for a war of aggression."

Doc. Bue. 224, Exhibit 63, Book III.

Further evidence:

Doc. Bue. 101, Exhibit 18, Book I,
 " " 102, " 19, " I,
 " " 277, " 61, " III,
 " ter Meer 173, Exh. 113, " IV
 " " 179, " 119, " IV.

Statement Dr. Bueterfisch, transcript, German
 page 8751 et seq., English page 8669.
 " Dr. Schneider, Transcript German page
 7417, English page 7352.

The following facts also speak very clearly
 against the contention that Farben must have recognized the
 intentions of the government from the development of
 the mineral oil field:

"Since April 1938, repeated discussions took place among the Deutsch-Amerikanische Petroleum-Gesellschaft, Hamburg, representatives of the Standard Oil Comp. of New Jersey and IG, relative to the manufacture of fuel through hydrogenation of kerosene fractions (Erdelfraktionen).... In summer 1939, plans had progressed so that at first 150,000 tons aviation gasoline and, perhaps at another plant, 150,000 tons automobile gasoline should be produced According to a telephone report of the DAFG of August 1939, this concern was then negotiating with competent offices to clarify the stage of construction of this plant."

Affidavit Dr. Pier - Doc. Bue. 271, Exh. 64, Book III.

If Farben had really had knowledge of intentions to wage war, it would have been irrelevant to project shortly before an installation dependent upon overseas raw materials. This very plan shows the purely economic nature of the hydrogenation program.

The witness for the prosecution, Dr. Jacobi, expresses his assumption that Farben was not able to fulfil its nitrogen export quota in the year preceding the outbreak of war.

because it had given preference to the war-essential gasoline at the expense of its nitrogen production.

NI-7745, Exhibit 611, Book 34.

The contrary was the case: the nitrogen production of Farben rose, but the sale of fertilizer nitrogen rose even more. Hence in July 1939 the profitability of converting from gasoline to fertilizer nitrogen was still given consideration.

Evidence:

Loc. Bue. 20, Exh. 12, Book I,
Loc. Schneider, 158, Exh. 13, Book VIII,
Loc. Bue., 104, Exhibit 5, Book I,
" " 11, " 59, " III.

Document Bustefisch 20 shows that gasoline production in Louisa even sank from 1937 to 1938, and only rose again in 1939 as a result of the war.

Nothing can better contradict the prosecution's assertion that the synthetic production of mineral oils was aimed at an aggressive war than the development of high-grade aviation gasoline, and its manufacture by Farben. In the trial brief of the prosecution, page 34, it states:

"In 1933 Farben began to hold discussions with the Luftwaffe on high-grade aviation gasoline for the Luftwaffe;"

the prosecution refers to:

NI-9931, Exhibit 523, Book 26,
NI-9088, " 524, " 26.

This concerns discussions of Farben offices with the Air Ministry which, in Germany, represents the interests of civilian and military aviation.

Evidence:

Loc. Bue. 350, Exhibit 275, Suppl. Vol. III.
Statement Dr. Bustefisch, trans. German p. 8764, Engl. 8684.

During these informational discussions there is not a word to be

found concerning war intentions or aggressive war intentions. But in what country of the world did consultations not occur during these years between air officials and domestic producers?

Thus the ex-director of the Standard Oil Co. of New Jersey, Mr. Howard, says in his book "Bunk Rubber" on page 50:

" in April 1933 the Navy became interested and undertook some tests. From this time on Standard was continuously in touch with the Navy and later with the Army ..."

and on page 54 he describes the co-operation of Standard and Shell with the Army Air Corps with the introduction of iso-octane as an aviation fuel..

Doc. Buc 263, Exh. 128, Book VI.

The prosecution also presented:

NI-7836, Exhibit 528, Book 26.

This document is the contract concluded by the Moseburg Ammoniac plant with the Reich Air Ministry for the delivery of aviation gasoline; but it does not concern a particularly high-quality product, but a so-called "aviation basic gasoline" which was taken from normal automobile gasoline production; that is, it did ^{not} fulfill the requirements of highly developed military aeroplanes; the contract was a purely economic matter for Leuna.

Evidence:

"Aviation gasoline which was produced by hydrogenation was only a so-called basic gasoline with an octane rating of 68 to 70 and was, therefore, in this condition, unsuitable for aeroplanes. To make it suitable for modern airplane motors it had to be mixed with additional substances such as lead-tetra-ethyl, iso-octane or other high-grade anti-knock substances."

Doc. Bus 14, Exh. 85, Book IV.

The highly developed airplane engines can be fully exploited only if operated with the right fuel mixture. Approximately since 1935 special aviation gasolines were being used on an increasing scale in the Anglo-American world representing mixtures of a basic type of gasoline with iso-octane. Thus, at the beginning of the war, the gasoline used by the American airforce was practically exclusively a mixture of 40-50% of iso-octane and 60-50% of basic gasoline. This mixture had an octane rating of 100 Contrary to this, the aviation gasoline produced and delivered by the I.G.Farben was merely a modification of automobile gasoline, which with a few alterations was drawn from the automobile gasoline production. This product had an octane rating of approximately 68-70 and after addition of lead tetraethyl the octane rating was only 87. Gasolines of this type were at the beginning of the war permitted at best as basic gasolines for mixing with high grade, anti-knock gasoline components (iso-octane) by the Anglo-American airforce.

Doc. Bus 65, Exh. 86, Book IV.

"The interest of the I.G.Farben in the production of aviation gasoline was a manifold one.

- a) higher proceeds
- b) consideration of a possible future development of trade (development of civilian aviation).
- c) a higher production of combustibles which did not come under the guaranteed agreement and which was therefore profitable to the I.G.Farben.
- d) fear that aviation gasoline derived from Hydrogenation of hard coal and/or imported gasoline might compete with the I.G.Farben for the market.

Doc. Bus 21, Exh. 84, Book IV.

Also testimony Dr. Bus., transcript, Ger. P. 8982, Engl. p. 8892.

Relative to the development of the production of aviation gasoline, and especially of high grade gasoline, in Germany

the defendant Dr. Bueteifisch submitted an expose and gave testimony concerning it on the witness stand. It was Dr. Bueteifisch himself who consciously held back German production expansion for high-octane aviation gasoline and who, at the same time, did not press the production with the early known method through isobutyl-alcohol; he worked toward another development which seemed to him to be more sensible for German raw material conditions and maintained this policy until the war, although he knew that large quantities of high-service fuels were already produced abroad with Farben's process. There would hardly have been room for such considerations at Farben and on the part of its responsible technicians, if they had known of any aggressive intentions of the German government. In any case, the result was that, at the outbreak of war, the German Luftwaffe was, for all practical purposes, without adequate quantities of iso-octane and, consequently, was far inferior to the air forces of other countries in the matter of fuels.

Evidence:

In the minutes of the oil discussion of 6 March 1935, it is stated:

"This very iso-octane ... also makes possible commercial production..... It is fortunate that we in Germany possess in the isobutyl-synthesis a method to manufacture from water gas any quantity of this "super aircraft gasoline", as it has been called."

Doc. Bue. 51, Exh. 87, Book IV.

"Consequently, in 1935 the Reich Air Ministry approached the I.G. Farben Industry, that is Dr. Mueller-Gunradi at Ludwigshafen, with the question whether the I.G. Farben would likewise be in a position to deliver this high-test fuel. Thereupon I.G. Farben stated that the iso-octane was produced in America from cracking gases, but that in Germany these cracking gases as raw materials were lacking. However, the I.G. Farben would be in a position to produce iso-octane through the carbon monoxide-hydrogen-synthesis, that is through isobutyl-alcohol.....

"... However, I.G. Farben was not keen on constructing a larger plant, because the concern, and especially Dr. Buetefisch, stressed in this as in all such cases the necessity first of all taking into account the economic considerations in the development of new production methods. His opinion in this particular case was that it should become possible to extract this product through organic development from the waste gases of hydrogenation. Of course this method would still presuppose a considerable phase and would consume considerable time".

Doc.Bue. 74, Exh. 88, Book IV.

"The I.G. Farben, in particular Dr. Buetefisch, saw a technically and economically more reasonable solution of the manufacture of iso-octane in the utilization of hydrogenated exhaust gases. . . . Until the outbreak of the war, however, no technical plant utilizing this process was in operation. From this it appears, perforce, that in 1939 Germany was perhaps the least prepared for war in the very field of aviation gasoline".

Doc.Bue. 65, Exh. 86, Book IV.

Further evidence:

Doc.Bue. 184, Exh. 21, Book I
 " 14, " 85, " IV
 Statement Dr. Krsuch, transcript, German page 5084 et seq., Engl. page 5063
 " Dr. Buetefisch, transo. German pages 8763 et seq., Engl. page 8683.

The prosecution considers the erection of lead-tetra-ethylene installations (trial brief page 43) to be further alleged evidence for the preparation of an aggressive war. For this purpose it presents the following documents:

NI-7822, Exhibit 535, Book 27,
 NI-7127, " 536, " 27.

But lead-tetra-ethyl is not only a fuel additive for the needs of the Luftwaffe, but is also used by civil aviation; in addition, it was also introduced for automobile fuel in Germany, following the example of the USA. The installation in Guel was set up in 1936 in keeping with a contract with the Ethyl Gas Corporation, which contract had met with the approval of the U.S. government.

It was operated by a special company, the Ethyl GmbH, in which American companies held a 50% participation.

Evidence:

Testimony Dr. Schneider, transcript German page 7413, English page 7349
 " Dr. Bustefisch, transcript, German page 8764, English page 8684
 Doc. Bue. 348, Exh. No. 276, Suppl. Vol. III;
 " " 35 " " 119, Book VI
 (Contract No. 15)
 " Krauch 50, Exh. 21, Book I.

The prosecution also speaks frequently of the production of synthetic lubricants by Farben and its war importance. Thus, according to

NI-8314, Exhibit 541, Vol. 27, also
 Statement Elias, transcript German page 1339,
 English page 1362.

Farben is supposed to have produced 100% of the synthetic lubricants. This is not correct; Farben was rather one of several producers, and in 1943 its share was only 31%. Moreover, at that time synthetic production amounted only to approx. 6% of the entire German lubricant production. Before the war Farben produced only small test quantities.

Evidence:

Doc. Bue 103, Exhibit 22, Book I.
 Testimony Dr. Bustefisch, transcript German page 8762,
 English page 8682.

The prosecution attempts to support its charge (trial brief page 46) of procurement and stock-piling of war material for the mineral oil field with these documents:

NI-4690, Exhibit 731, Book 39,
 NI-4922, " 732, " 39,
 NI-4831, " 733, " 39.

The first document is concerned with the purchase of mineral oils undertaken by Farben from its foreign business friends at the request of the German government.

Dr. Schneider testifies relative to this purchase that it was a purely business matter in which the technicians of Farben and hence Dr. Buetelesch also did not take part, and concerning which, moreover, they knew nothing. The other two documents bring forth the temporary procurement of 500 tons lead-tetra-ethyl. Dr. Buetelesch had nothing to do with this either; no special incriminating evidence was brought against him on this point. As already mentioned, the production of this product was handled by the Ethyl GmbH, in whose management Dr. Buetelesch did not take part.

In itself there would not have been any compelling material at all to conclude the procurement of this amount of lead-tetra-ethyl for war preparations, for on 1 May 1939 a previously expected order actually went into effect, proscribing that lead-tetra-ethyl be added to automobile gasoline in the larger part of the Reich.

Evidence:

Doc. Bae. 348, Exh. 276, Suppl. Vol. III,

" Krauch 50, " 21, Book I.

Testimony Dr. Buetelesch, transcript, German page 8789,
English page 8711;

" Dr. Schneider, transcript, German page 7427,
English page 7362;

" Dr. Krauch, transcript, German page 5154
English page 5129.

My client Dr. Buefisch similarly had nothing to do with the measures (removal of products from the Ludwigshafen-Oppau plant) described in the prosecution's documents:

EE -97,	Exhibit 229,	Book 8;
NI - 7121,	" 230,	" 8;
NI-7125,	" 231,	" 8;
NI-7124,	" 232,	" 8.

Testimony Dr. Schneider, trans., German page 7425, Engl. page 7360.

On page 46a of the trial brief it is further pointed out that Farben took part in the establishment of the Wifo, and it is maintained that Farben's task was the procurement of strategic reserves of important raw and finished materials, of which the first-named was gasoline.

EG-25,	Exhibit 752,	Book 41,
EG-24,	" 753,	" 41,
NI-6347,	" 754,	" 41,
NI-7131,	" 755,	" 41.

Actually, however, Farben first came into contact with the Wifo through its technical knowledge in the production of concentrated nitric acid which belonged to the normal peace-time activities of Farben. Then, when Wifo soon turned its attention to other tasks in other fields, Farben sold out its capital participation, as can be seen from the prosecution documents mentioned.

Evidence:

See Schneider 155, Exhibit 19, Book 8,
Testimony Dr. Schneider, trans. German page 7411 et seq.,
English page 7347.

It still remains to consider:

NI-6925, Exh. 1055, Book 51.

This is a preamble which was affixed to the license agreement of Farben with the Japanese army concerning the hydrogenation process, and from which the prosecution quotes the active participation of Farben in the "New World Order." (Trial Brief, page 75).

The actual history of the concluding of this agreement and its preamble is shown by the evidence of the defense:

"The I.G. made a point of treating the negotiations with regard to the contract in a dilatory manner. It endeavored to delay the matter until it was no longer possible to conclude the contract. Among other factors, the consideration that a conclusion of the contract during the war might impede the good relations between the I.G. and Standard Oil after the war, was decisive for this.... The pressure exerted by the Reich Ministry of Economy on the I.G. on account of the Japan contract was, however, increased so much toward the end of 1944, that the conclusion of the contract could no longer be postponed..... The preamble was specifically requested by the Reich Ministry of Economy and the Japanese. Its contents and formulation were decided upon through diplomatic channels between the Reich Ministry of Economy or the Foreign Office and the Japanese Embassy. The preamble was then submitted to the I.G. some time before the contract was signed and both governments expressed the compelling desire that it be incorporated in the contract. Neither the I.G. as a whole nor Dr. Buchtafisch in particular had any influence whatsoever on the formulation of the preamble....."

Doc. Bue. 68, Exh. 105, Book V.

Further evidence:

Doc. Bue. 66, Exh. 103, Book V,

" " 67, " 104, " V.

Testimony Dr. Buchtafisch, Transcript, German page 8795, English page 8716/2.

Under section f) of the 1st part of the indictment

Farben is charged with having used its international

agreements to effect the weakening of Germany's potential enemies. This charge will be discussed

here particularly for the mineral oil field. In the prosecution's trial brief it is stated on page 47:

"Forben's contractual history with Standard Oil is an excellent illustration of the manner in which Forben, in close co-operation with the Nazi government, deliberately used international cartel agreements as a military weapon to weaken other countries."

As evidence it then presents the contracts concluded between Standard and IG.

NI-10453, Exhibit 959, Book 42,
NI-10550, Exhibit 942, Book 42,
NI-10430, Exhibit 943, Book 42,
NI-10432, Exhibit 944, Book 42,

The prosecution then continues in the trial brief on page 47c:

"The Standard Oil Company observed the agreement meticulously and spoke of the "spirit of good will" on the part of Forben. (Exh. 946, NI-10431, Bk 42, p. 73). Forben, on the contrary, throughout the period of the agreement, behaved with calculated deceitfulness, and its every move was made in consultation with the Nazi government and was directed to strengthen Germany's technical position and slow down research in the United States."

As proof in support of these accusations, the prosecution submits discussion reports and file memoranda on conversations with Wehrmacht offices.

In summarizing, the prosecution believes it can read Forben's position out of a memorandum which was "handed over by scientists of IG Forben to the defendant v. Knieriem in May, 1944. (NI-10,551, Exh. 994, Book 43).

In the trial brief, page 51, it is stated:

"This memorandum relates the story (in part) of how Forben weakened the United States and what she got from the United States which was "vital for the conduct of war."

In objectively examining the material it is a perfect outrage that such charges should be made without knowledge of the true facts of the case, whereas every expert knows that precisely through the co-operation of the large crude oil concerns of the world with Farben a solution was found to the important problem of processing heavy carbohydrates into mineral oils by chemical processes. Thus in 1923 Farben attacked not only a German, but a world economic problem, and the crude oil concerns of the world derived great advantages from its successful work. The close-co-operation of Farben with the large crude oil firms is shown by the chart in Loc.Buc.300, Exh. 120, Book VI.

The international agreements of Farben did not cause the weakening of other countries, precisely the contrary, especially for the crude oil and wealthy coal-producing countries of the world, including America. Farben not only fulfilled the terms of its agreements, but, in addition, often gave its information and the results of its research in developmental stages to its contractual partners, before they were utilized in Germany; Farben was not contractually bound to do this. Details of this technical co-operations and the internal exchange of information by the contracting partners were presented by the defense in Book VI (Buc-Exhibits). In addition, the bases for the historical development of the contracts and of the exchange of information can be seen in the history of hydrogenation, (Loc.Buc. 79, Exhibit 11, Book I).

To contest the contention of the prosecution some important dates will be indicated here:

1929: "The Bodische process by which the entire barrel of crude oil could, if necessary, be converted into gasoline was therefore of the utmost potential value.".....
"Our recognition of this national characteristic was perhaps the most important factor in maintaining a steady flow of scientific information from the great IG laboratories through the years which followed....."

Standard's young technical organization in Louisiana was being expanded but found it difficult to digest the mass of costly research data from the I.G. laboratories and technical reports from our own engineers inspecting the German experimental installations."....

Doc. Bue 263, Exhibit 128, Book VI.

Four Party Agreement with Standard Oil (Doc. Bue. 25, Exh. 119 Book VI, Contract No.).

The affiant Howard states the following concerning the exchange of information already begun in 1929:

"In the case of the new chemical product now known as parafflow, this product was described and shown to Mr. Garland Davis of Standard in 1929, before any commercial production of the product by I.G."

Doc. Bue. 312, Exhibit 129, Book VI (Supplement).

1930: "In the case of the new product called Oppanol by I.G. and called Paratone or Vistanex by Standard, affiant personally received the first sample of this product delivered to Standard representatives and witnessed a laboratory demonstration of the production before any commercial operations in Germany."

Doc. Bue 312, Exhibit 129, Book VI (Supplement)

1931: "Experimental work at Billingham (I.C.I.) started early in 1927, and in 1929 it was decided to build a pilot plant to treat 10 tons per day of coal ... As the process developed, the I.C.I. realized although the original Bergius patents had lapsed there were many important patents held by the Standard-I.G. group. Discussions were opened with this group, as a result of which in 1931 the four major operators in the field-namely, the I.G. of Germany, the Standard Oil Co. (New Jersey), the Royal-Dutch-Shell group, and the I.C. I., associated themselves

in a pooling Company, the International Hydrogenation Patents Co., in order to pool their patent rights and to effect a general exchange of technical information."

Doc. Buc. 281, Exhibit 55, Book III.

- 1932: Visit of Standard (Mr. Clark and Prof. Haelan) to Ludwigshafen. Exchange of information concerning hydrogenation questions.

Doc. Buc. 117, Exhibit 113, Book VI.

- 1933: Common fields of work of Standard and Farben were discussed, improvements found in Oppau were reported for checking by Standard.

Doc. Buc. 54, Exhibit 50, Book VI.

- 1934: Agreement with Standard: Agreement re Parafluorol dyes.

Doc. Buc. 79, Exhibit 11, Book I and
" " 25, " 119, " VI.

(contract No. 2).

- 1935: Commencement of operations of hydrogenation plant in England. First talks of Farben with other American firms associated in the Juik (Union Oil Co., Standard Oil Co., Standard Oil of Indiana and Kellogg Company).

Technical solution of manufacture of iso-octane through I.G., and forwarding this information to Standard.

Doc. Buc. 79, Exhibit 11, Book I.

In this respect the witness Howard states in his book, "Buna Rubber:"

"We hydrogenated the twins to make iso-octane, using the I.G. high pressure hydrogenation technique slightly modified, and decomposed the triplots back to pure isobutylene by passing them over a catalyst. These processes worked smoothly and successfully from the beginning and provided at one stroke our raw materials for both Vistanex and iso-octane..... The first 100 octane gasoline to be sold for commercial use was made up in this way at Standard's Baton Rouge refinery in June 1935."

Doc. Buc. 263, Exhibit 126, Book VI.

1936: forwarding of the Ethyl-lubricant process to Standard.

Affidavit Dr. Winger:

"Ethylene-lubricating-oil is a specially high-grade lubricating oil that was developed by Farben. Farben informed the Standard Oil Company in September 1936 through me, about the process, giving technical details on how to carry it out, and supplied it with samples for testing in November 1936."

Doc.Bus. 64, Exh. 122, Book IV.

From the Howard affidavit:

"In connection with the production of high quality aviation lubricating oils by synthesis starting from ethylene and paraffine, I.G. processes in this field were disclosed and discussed freely between Standard and I.G., be for any commercial operations in Germany which officent can recall".

Doc.Bus.312, Exh.129, Book VI (Supplement).

1937: Lectures on hydrogenation at the Paris Crude Oil Congress by Farben Reference to the possibility of the manufacture of aviation gasoline by Standard Oil and Shell. Doc.Bus.118, Exhibit 56, Book III. (The next world oil congress was scheduled for 1940 in Berlin; Farben took a big part in its preparation).

Doc.Bus. 289, Exh.177, Book VI,
" " 316, " 249, Supplementary Vol. III.

Outside Germany there are two plants of the Standard Oil Co. in operation, in Bayway and Baton Rouge, where aviation gasoline is being produced with diluted Farben catalysts.

Doc.Bus. 118, Exh. 56, Book VI,
" " 267, " 116, " VI.

Agreement with Standard Oil and various other American companies and polymerisation processes from gaseous carbohydrates into liquid fuels (Polyco-Agreement).

Doc.Bus. 25, Exh. 119, Book VI (Contract No. 10).

Contract agreement between Farben and Standard Oil for Propane Process.

Joint Agreement Doc.Bus. 25, Exh. 119, Book VI (contract No. 11).

In the field of aromatization I.G. offered Standard its latest contact processes for the manufacture of anti-knock fuels. Here the affiant Howard states:

"In the case of the hydroforming process, the basic IG work on the production or aromatization by the catalytic hydrogenation of liquid hydrocarbons of the gasoline type was disclosed by an early IG patent and discussed frequently with IG long before any development in the United States."

Doc. Buc 312, Exhibit 129, Book VI (Supplement).
1938: Conclusion of a large, new contract in the "Hydrocarbon-Synthesis" field, wherein at the instigation of Farben all information in this field is made available to America by Farben and Ruhrchemie. Contracting partners: Shell, Standard Oil Co. (N.J.), Kellogg Co. U.S.A.C., Farben and Ruhrchemie.

Doc. Buc 29, Exh. 42, Book VI,
" " 227, " 118, " VI,
" " 25, " 119, " VI (contract No. 13)

The affiant Howard states concerning the "Hydrocarbon-Synthesis" agreement:

"Referring to the agreements of 1938 between the German Ruhrchemie interests and IG, Standard Kellogg and the Royal Dutch-Shell interest relating to the process known as Hydrocarbon Synthesis, the technical work of I.G. in this field was useful and affiant believes it was disclosed to Standard before any commercial use in Germany or elsewhere. . . . This hydrocarbon synthesis agreement and the technical data of IG supplied to Standard and to the Kellogg Company under the agreement was, in the opinion of affiant, an important element in forming the foundation for the processes of producing gasoline from natural gas which have since been developed in the United States by the Hydrocarbon Research Corporation, by Standard and by the Kellogg Company. . . affiant believes that the American technologists who have pushed this new industry forward to a successful basis consider that the principal foundations were those provided by the Fischer-Tropsch work and the IG improvement thereon."

Doc. Buc 312, Exh. 129, Book VI (Supplement).

1939: Outline of another large catalytic refining agreement. In this contractual arrangement all Farben patents and experiences will be offered for utilization and exploitation to the oil industry of the world, and primarily to America for the pure oil industry which is of little importance in Germany. Contracting partners: Standard Oil Co. (N.J.), Shell, Texas Co., Standard Oil of Indiana, Kollogg Co., Universal Oil Products Co., IG-Farbenindustrie.

Evidence:

Doc. Bue. 25, Exh. 119, Book VI (contract No. 18).

Here the affiant Howard states:

"Referring to the lengthy negotiations culminating in the C.R.A., negotiator's memo initialled at Elde Resch, D.I. in August 1939, the I.G. representatives cooperated with Standard, as heretofore referred to in this affidavit, and assisted Standard in its effort to create the most effective co-operative group for research and development to advance this field of catalytic oil refining without the use of added hydrogen.... The "Fluid Catalyst-Process" grew out of this cooperation within the C.R.A. group and was brought to successful completion by Standard itself in 1941 The Fluid Catalyst Process was generally regarded as the greatest single contribution to oil technology during the recent war and was an indispensable foundation for the prompt production of the required enormous supplies of synthetic rubber and 100 octane gasoline of the United States and its Allies."

Doc. Bue. 312, Exh. 129, Book VI. (Supplement)

In all the contractual fields covered in these years, i.e. the entire chemical, mineral oil industry, a fair exchange of information took place which was in no way restricted by Farben or by Dr. Baetefisch. This is asserted both by the co-workers of Dr. Baetefisch and the American contracting partners:

"According this clause I.G. transferred to Standard I.G. 2770 patents and patent applications from the inception of the agreement to the outbreak of war in 1939."

Loc.Doc. 274, Exh. 115, Book VI.

The affiant Ringer states:

"Representatives of foreign companies, such as the Standard Oil Company of New Jersey, were almost constantly at the I.G., as contact men for the purpose of learning immediately of any new developments and reporting on them. Furthermore, specialists of the foreign partners to the agreements were very frequently at the I.G., sometimes for longish visits. At the high-pressure experiments alone, in Ludwigshafen, for example, there were an average of at least 25 foreign observers annually between 1933 and 1938 in connection with the exchange of technical experience in the field of hydrogenation. In addition, representatives of the foreign oil companies came to Louisa and Oppau for discussions concerning the other fields of the oil industry which were subject to the agreements. . . .

"The Standard Oil Company received samples of new important products (Parafflow, Oppanol-Parafflow) before the first tests of these new products in the laboratories of I.G. were completed. In many cases new technical processes were demonstrated in the first development stage to foreign agreement partners"

Loc.Doc. 64, Exh. 122, Book VI .

Here the affiant Howard states:

"Affiant's impression was that the general attitude of the I.G. executives regarding cooperation with Standard under all agreements between them conformed to high standards of business ethics. This applies specifically to Dr. Kneuch, Dr. v. Kriesheim, Dr. Buetefisch and Dr. Schmitt, with each of whom affiant had many business contacts over a long period of years beginning in 1927 in connection with said agreements"

(Loc.Doc. 312, Exh. 129, Book VI. (Supplement))

The affiant Winkler states:

"Instructions had been issued by the I.G. management, i.e. particularly by Dr. Buetefisch, to the effect that no reserve was to be exercised in making available to these people all pertinent, technical information, including that which was still in the course of development, although the agreement between I.G. and the American firm, the Catalytic Refining Agreement, had not yet been concluded. I again drew the attention of the Standard oil people to this process and demonstrated a small-scale experiment. In May 1938 I received, through the Standard Oil, a 5 kilogram sample of Aruba asphalt from a Standard plant on the Antilles Island of Aruba. After a successful experiment had been carried out with this small quantity of asphalt about 1000 kilograms of Aruba asphalt was sent to us by Standard Oil, through the German American Petroleum Company in Hamburg, which arrived at the nitrogen works at Oppau at the end of November 1938. Then I was able to show on a large scale that the cracking of asphalt could be carried out in a "fluid" bed of glowing, granulated material without the individual grains of the asphalt, while being baked at a high temperature, fusing into large lumps. Then from the beginning of 1939 the Standard Oil of New Jersey developed

its "fluid catalytic cracking" process for the cracking of heavy mineral oils and manufactured with this process very large quantities of 100 octane aviation gasoline and butylene for Buna rubber."

Doc. Buc. 270, Exhibit 121, Book VI.

The affiant Frece states:

The exchange of experience with Standard was carried out in that, in Ludwigshafen and also in Leuna, a few gentlemen from the Standard in America stayed there, to whom we had to communicate all our experimental and research results in full and with whom we continuously had discussions of a technical nature in accordance with the instructions of our superiors. I recollect that in 1937/38 Messrs. Asbury and Lewdney of the Standard Oil of New Jersey and Mr. Mansfield of the N.W. Kellogg Co., availed themselves of this exchange of experience. As a result of this active exchange of experience, which took place between Ludwigshafen and the Leuna works on the one hand and the Standard Oil of New Jersey and the N.W. Kellogg Co., on the other, the American work on catalytic cracking was greatly furthered in respect of the synthetic cracking catalysts developed in Ludwigshafen."

Further exhibits:

Doc. Buc. 263, Exhibit 128, Book VI,
" " 71, " 57, " VI,
Testimony Dr. Krauch, transcript, German page 5081,
English page 5060;
" " Buotefisch, transcr. German page 8803,
et seq. English page 8725.

According to the above evidence, technical developments, achievements and processes were brought by Farber to the oil industry through regular, loyally carried out exchange of information, etc.:

1. Hydrogenation of heavy carbohydrates into gasoline.

Doc. Buc. 71, Exhibit 57, Book VI.

2. Manufacture of anti-knock fuels through catalytic hydrogenation

Doc. Buc. 312, Exhibit 129, Book VI.

3. Parafflow.

Doc. Buc. 25, Exhibit 119, Book VI
(contract No. 6)

4. Oppanol.

Doc. Buc. 25, Exh. 119, Book VI
(contract No. 7).

5. Iso-octane

Doc. Buc 6, Exh. 125, Book VI
" " 312 " 129, " VI

6. Lubricants

Doc. Buc 64, Exh. 122, Book VI

7. Carbohydrates-Synthesis

Doc. Buc 312, Exh. 129, Book VI
" " 64, " 122, " VI

8. Catalytic refining experiences

Doc. Buc 270, Exh. 121, Book VI
" " 70, " 123, " VI

The prosecution has presented no evidence to show that Farben had not exchanged any process whatsoever in the mineral oil field, or had not fulfilled its contractual obligations on schedule.

There are even various exhibits of the defense on hand to show that Farben already reported its experiences in a developmental stage to the contracting partners, although not bound to do so.

"In the case of the new chemical product now known as Paraffin, this product was described and shown to the Mr. Garland Davis of Standard in 1929 before any commercial-production by I.G. In the case of the process known as Hydrocarbon Synthesis affiant recalls a visit to an I.G. pilot plant which had begun but not completed a series of test runs."

Doc. Buc 312, Exh. 129, Book VI.

Further evidence:

Doc. Buc 270, Exh. 121, Book VI,
" " 64, " 122, " "
" " 70, " 123, " "

Relative to the value of the processes given to Standard, the qualified judges, affiants Howard and Haslam, stated:

"In general it may be said that the hydrogenation process acquired by Standard from I.G. under agreements of 1927 and 1929 and subsequently developed by these two companies and their licensees will permit the conversion of coal to oil in the United States on a successful industrial basis and on any required scale, and that the subsequently developed hydrocarbon

synthesis process will accomplish this conversion of coal to oil in a manner better suited to American conditions and at a presently estimated expense less than the expense of the hydrogenation process. It also permits the use of natural gas to the extent that it is available as a supplementary source of liquid fuel,....

....The Fluid Catalyst Process was generally regarded as the greatest single contribution to oil technology during the recent war and was an indispensable foundation for the prompt production of the required enormous supplies of synthetic rubber and 100 octane gasoline of the United States and its Allies."

Doc. Buc. 312, Exh. 129, Book VI.

An article by Prof. Haslam in the Petroleum Times of 25 December 1942, reads:

".....that it was the use of 100-octane gasoline-first made commercially possible by American use of the hydrogenation process - that was largely responsible for victory in the Battle of Britain that four of five of these bombs dropping on Germany came from petroleum and that most of them use tetraol made by that hydrogenation process we bought from Germany 14 years ago."

Doc. Buc. 6, Exh. 125, Book VI.

Further:

Doc. Buc. 77, Exh. 127, Book VI
" " 263, " 128, " VI.

At the very beginning of this section concerning the international exchange of information, page 51 of the trial brief was quoted, in which the prosecution introduced a Farben file memorandum, NI-10551, Exh. 994, Book 43, and from which it wishes to conclude what advantages Farben has had from the international agreements without giving corresponding services in return. This file memorandum was composed provisionally in 1943 by Farben in reply to the above quoted article of Prof. Haslam, excerpts of which are cited in Doc. Buc. 6, Exh. 125, Book IV, and common knowledge of which, in Germany, could have led to very serious consequences for Farben.

Evidence:

Doc. Buc. 23, Exh. 126, Book VI
Testimony Dr. Buc., Transcript German page 8819,
English page 8740,
" Dr. v. Knierim, Transcript German
page 6662, English page 6557.

On technically evaluating the article by Haslam, it is immediately clear that certainly next to nothing could be given to Farben by the Americans for its Farben's own purposes, i.e. for the extraction of carbohydrates from carbon. What Farben actually received through the co-operation was primarily suggestions for the future development of processes which were of extreme importance not so much to Farben itself as for the crude oil industry of the world. With exhibits

NI-9931,	Exhibit 523,	Vol 26,
NI-9030,	" 524,	" 26,
NI- 355,	" 525,	" 26,
NI-10437,	" 954,	" 42

the prosecution seeks to prove that every exchange of information on Farben's plant was carried out only after consultation with the Nazi government, and was designed to strengthen Germany's position relative to technology, and to hold up research activities in the United States.

Discussions concerning technical progress in every

field of industry and technology will take place in all countries of the world with governmental and military offices. This fact was taken into consideration from the outset by the contracting parties through special provisions in the agreements. Relative to the old agreements of Farben with Standard the "Teaglo-Schmitz-letter" provided a regulation for exceptional cases which read as follows with regard to government influence:

"For the case that one of the Parties might later be restricted or hindered, through the implementation of a current or future law, in carrying out this agreement or one of the points agreed upon therein, . . . the Parties will assume new negotiations under the terms of the present agreement, and will attempt to adjust their relations to the newly created conditions".

NI-10432, Exhibit 944, Book 42,
also Doc. 25, Exh. 119, Book VI (contract No. 4).

The hydrocarbon synthesis agreement contained a corresponding hardship clause, as did the catalytic refining agreement.

Doc. 25, Exh. 119, Book VI (contract No. 18).

In fact, however, the possibilities for modification provided in the above clauses did not at all result in a substantial or even a noticeable restriction of the common, large-scale research and developmental projects. The exceptional cases which arose were mutually recognized by the contracting parties, and a working agreement for disposal of such cases was reached.

In view of the steadily waxing disinclination of the German government toward international agreements and exchange of information, it was precisely Dr. Bueterfisch who endeavored, through special exertions, to live up to the agreements loyally in every way, in spite of the government, and, who, moreover, persisted in the idea of free research and development activities for free industry. This is the only way in which the two large-scale agreements in the oil field can be understood, viz., the hydrocarbon synthesis agreement of 1938 and the catalytic refining agreement.

Evidence:

Affidavit Howard:

"Affiant assumed that there were regulations or directives of the German government dealing with the export of technical information but is without knowledge of whether any such directives actually existed and does not recall any instance prior to September 1, 1939 in which exchange of technical experience was refused by I.G. on the ground that it was incompatible with a government directive."

Doc. Bue. 312, Exh. 129, Book VI, (Supplement).

Similarly, the affiant Ringer, inter alia, states:

"As far as I knew, the I.G. also succeeded, through conferences or written appeals, in removing the objections of the government authorities to the exchange of experience in all important cases in the fields in which I was engaged. In such cases the I.G. always took the utmost pains, by describing the circumstances, to avoid being hindered from loyally fulfilling the obligations assumed under the contract....

The responsibility, and the dangers connected with it, which the I.G., especially Dr. Bueterfisch, had to bear, in fulfilling an exchange-of-experiences agreement of mutual trust were great."

Doc. Bue. 64, Exh. 122, Book VI.

The documents introduced by the prosecution,

NI-5931, Exhibit 523, Book 26,
NI-10437, " 954, " 42

are in no way incriminating since the processes mentioned therein were given

to the American contracting partners in the exchange of information according to my compilation on page 61. The fact that the Wehrmacht forbade Farben to publish any figures of German capacity or production concerning these processes did not affect the industrial interests of the American contracting partners; nor were such reports an object of the agreements.

It is interesting to establish that it was not Farben, which used the possibilities of "exceptional cases" as established in the agreements, but rather Standard Oil and Kellogg.

Evidence:

A quotation from the often mentioned affidavit of Mr. Howard reads:

"The first such instance which affiant recalls was on or about March 1935 when certain requests were made by the Army of the United States in connection with the maintenance of secrecy on new processes for the manufacture of aviation gasoline."

and at another point in this affidavit:

"Further questions arose in connection with the use of certain variants of this hydroforming process for producing pure aromatic compounds, and especially toluene to be used as a chemical raw material for the manufacture of the explosive T. N. T. Standard decided, ex parte, that it would neither ask nor give any information concerning this specific operation to I.G. Affiant believed at the time and still believes that in view of the nature of the problem, and the terms of the contracts, Standard's ex parte decision not to exchange information with I.G. on the use of variants of the hydroforming process for the production of pure toluene for the manufacture of T. N. T. was justifiable and proper but affiant, of course, recognized that this action was tantamount to a recognition of the right of the other party to make similar ex parte decisions of the meaning and intent of the contracts as applied to similar situations."

Doc. Bue 312, Exh. 129, Book VI (Supplement)

"If we had official instructions not to disclose a process the partner was previously informed. This applied to the I.G. as well as to the Standard and Kellogg Co., and each party fully understood. For instance, the installations and laboratories of the M. W. Kellogg Co. were not shown to us with the express explanation that contracts for the American army were underway."

Doc. Buc 70, Exhibit 123, Book VI,
Further evidence on this point;

Doc. Buc 32, Exhibit 114, Book VI
Testimony Dr. Eruch, transcript, Gern.p. 5154,
Engl.p. 5129,
" Dr. Buetelesch, " Gern.p. 8810,
Engl.p. 8733,
" Dr. v. Knierich, " Gern.p. 6657,
Engl.p. 6552.

The prosecution documents

NI-10463 Exhibit 971, Book 42
 NI-10464 " 972 " 42

show that even very shortly before the outbreak of war there was an extensive exchange of experiences, particularly with regard to the newly concluded contracts with Standard Oil and other partners to the contract. Thus, the intensive exchange of information is not only a sign of loyal adherence to the contracts; it proves also that Farben and Dr. Buetefisch could not have had aggressive warfare in mind at that time:

Evidence: "In summer 1939 three gentlemen of Leuna were detailed by Dr. Buetefisch to continue, by way of a return visit, the conferences regarding the exchange of experience in catalytic and related processes in the United States of America..... Nobody, including Dr. Buetefisch in particular, instructed us to be reticent regarding our research and development work. On the contrary, we were instructed to serve the promotion of the great problem in its entirety in every way."

Doc. Bue. 70, Exhibit 123, Book VI.

By an unavoidable official ruling in Germany a government office permit was required for the conclusion of new contracts and for trips abroad by chemists. In the same way the exports concerned had to be informed before their departure that they were not at liberty to disclose any military secrets.

The continuation of the exchange of data after the outbreak of war on 1 September 1939 was of course a particular problem. Actually the legal departments of both parties proposed and discussed various solutions. ^{this} Mr. Bucatulescu mentioned in detail during his interrogation saying that he had endeavored to adhere to the contracts as far as possible.

Transcript page 8815 English page 8737

This is also borne out in the following affidavit by Mr. Fior:

"In practice, also after the outbreak of war we have always endeavored to act in such a way that any time the contractual relations could have been taken up again and that we did not violate the spirit of the contract."

Loc. Buc. 71, Exh. 57, Book VI.

The Prosecution does not recognize these honest efforts on the part of Verbena and has the documents in question among their prosecution material.

Prosecution Document VI-10439, Exh. 91, Book 43, which is a letter to military economy staff and is co-signed by my client refers to the Buna field with which my client was not directly connected. This document has been dealt with by Mr. Peter Meer. The difficulties arising from the outbreak of war are clearly shown in

VI-10442, Exhibit 980, Book 43.

This document describes the conferences which took place between Standard and Verbena in September 1939 in the Hague for the purpose of settling the problems arising from the outbreak of war. Here the patent transfers covered by the Four Party Agreement were discussed with Standard Oil, and the contract obligations in the Jasco field

were settled with the full concurrence of Standard Oil. Both these projects do not directly belong to the mineral oil field, and did not, therefore, come into the orbit of my client.

The field of hydrocarbon synthesis with which Dr. Baetefisch was entrusted was not expressly mentioned at that time but both parties desired to continue the exchange of data. On the other hand the above document contains detailed concerning the further treatment of the Catalytic Refining Agreements.

"Upon my (Wingers) inquiry how the American Shell Doc. Co. felt about this problem Howard said that, in contrast to the Bataaf'sche, the American Shell Doc. Co. was of the opinion that they would be able to enter a contract and a further exchange of data with IG but that the Bataaf'sche would probably insist on its point of view arrived at under the influence of London, i.e. that the American Shell Doc. Co. was not to have any direct exchange of data with IG. In these circumstances, Howard said, it would, of course, be impossible for IG to conclude a contract with Shell now. He thought it possible all the same, he said, to adhere, on the whole, to the construction found in Long Beach; in this way it would be impossible for IG experienced to go to Shell and vice versa.... and that the Standard - IG would then forward such rights to IG with the restriction that an exchange of data can take place only to the extent to which this is compatible with the laws of the countries of the companies in question.... This proposition was made in a letter to be addressed to Howard by us, and we now have this letter before us for a decision."

This shows the difficulties on both sides in connection with a continued exchange of data between Forben and Standard, 2 firms whose countries were not at war.

Testimony, Dr. Baetefisch transcript German page 8816
English page 8738.

For Forben a new situation was created during their conference with Howard in the Hague which explains the prosecution document

NI-10447, Exhibit 958, Book 42.

From this document the prosecution quotes in their trial brief, page 48:

"We dealt with this exchange of experiences in this way up to now, we on our part gave reports only which we considered harmless after discussing them with the OKW and the RLM (Army High Command and Reich Defense Ministry) and contained only such technical data which pertained to well known projects or those which were obsolete in the light of our latest experience. Thus we handled the contracts in such a manner that they constituted an advantage for German industry".

The prosecution describes this file note which my client in January 1940 handed to the OKW for information as typical of Farben's cartelization policy, although it is evident from the file note ^{itself} that Farben, and particularly my client Dr. Bueckelmann, despite the war endeavored, in all circumstances, to continue the exchange of experimental data in the case of the newly concluded contracts; to wit the Hydro-carbon Synthesis Field and the Catalytic Refining arrangement for the document states:

"There are contracts and agreements in the mineral oil field between the German producers (IG Farben Industrie AG and Ruhr Chemie) and the big oil corporation such as Standard Oil, Shell. These agreements provide, i.e., for an exchange of experimental data pertaining to mineral oil between the contracting parties".

Although no definite settlement of the exchange of experimental data for the period after September 1939 had been arrived at during the conferences in the Hague, that is no legal obligation had been incurred, my client Dr. Bueckelmann attempted in the teeth of the considerable resistance from Nazi Party and Wehrmacht agencies to continue the exchange of experimental data so that the technical research which had been started on a broad basis would not be disturbed by the war. To this end he called on General Thomas, who, however,

did not wish to assume the responsibility for a decision and therefore suggested that Buotefisch hand him a file note to be used as a basis for an oral report to be made to Goering. In order to dispel any objections on the part of Goering and to obtain his consent in any event, the sentence objected to by the prosecution "only such technical data which dealt with either known matters or were rendered technically obsolete according to the most recent developments" was included.

My evidence proves that this phrasing was a necessity prompted by expediency but did not correspond to Farben's true intention and Dr. Buotefisch's implementation of the contract.

Affidavit of General Brocht, former Chief of the Raw Material Department at the OKW.

" In Spring 1940 Dr. Buotefisch, the technical chief of the Leuna Werke came to General Thomas in order to request him to assist in questions of the continuation of the exchange of experience with the Standard Oil Co.... At the same time protection of IG against possible attacks by Party offices, who in many cases were inimical to IG was to be secured thereby.... As basis for a short report to the Reichsmarschall, General Thomas requested a file note from Dr. Buotefisch which was to be prepared in such a way as to enable a positive decision in the sense of the application by Dr. Buotefisch to be brought about. For this reason the file note by Dr. Buotefisch was deliberately and with the full understanding of General Thomas formulated in such a way that the Reichsmarschall would see in the continuation of the exchange of experience an advantage but no danger to the German defense.... I would like to add that Dr. Buotefisch by the form which the Reichsmarschall gave his authorization took upon himself a most dangerous responsibility as far as his own person was concerned."

Doc. Bue. 69, Exhibit 124, Book VI

Concerning the same subject the affiant Dr. Pier testifies:

"If Dr. Baetefisch - which was up to now not known to me - informed the Army High Command in 1940 that the exchange of experience was done in such a way that only outdated technical data were passed on, this can have happened only in order to make a continuation of the exchange of experience with the American business friends at all possible."

Doc Bue 71 Exhibit 57 Book VI

Farther evidence:

Testimony of Dr. Baetefisch, transcript
German page 8617, English 8739.

The argument of the trial brief of the prosecution that Perben's handling of international contracts lead to a weakening of the potential of Germany's later enemies is not correct. On the contrary, they received valuable contributions to their world-economic through this always fair exchange of experiences. In the last resort they could even use the information received against Germany during the war. At the same time, however, this exchange of experimental data has had its favorable effect upon the development of the American oil industry to this day.

Evidence: Affidavit Howard.

- " The hydrocarbon synthesis process is now regarded in the United States as one of the main reliances of the nation for meeting its long term requirements for liquid hydrocarbon supplementing supplies of crude oil
The Fluid Catalytic Process was generally regarded as the greatest single contribution to oil technology during the recent war and was an indispensable foundation for the prompt production of the required enormous supplies of synthetic rubber and 100 octane gasoline of the United States and its Allies.

The two above mentioned contracts were initiated by my client, Dr. Gustafsch in 1936 and 1939 and they were concluded with his collaboration and assistance. As a competent judge of the fair attitude of his German contract partners the affiant Hornig states:

"That everyone seemed to be of the opinion that the I.G. executives would do the best they could to live up to their agreements and nothing was to be gained by raising any question of governmental intervention on either side of such contracts, as it must be assumed that each side would have to comply with and conform to the directive of its own government".

See Bue. 312 Exh. 129, Book VI

See also in this respect " 6 " 125 " VI

The evidence presented shows the following in respect of the extraction and production of mineral oils by Farben and my clients' activities:

"No pact " with Hitler ever existed. The production of fuels and lubricates was governed by industrial requirements. The charges of subsections b) to e) do not apply to Farben production. The international contracts were not misused for the weakening of Germany's later enemies but were fairly complied with.

Finally we shall have to discuss the charge-arising from count I of the indictment which accuse my client of actual or alleged collaboration in the organization of industry and the state.

The prosecution states on page 23 of its trial brief that Dr. Buetevisch had been official advisor to Kruech in his "key position in the government". It refers to document NI-6713 Exhibit 512, Book 25 and concludes that Dr. Buetevisch energetically supported the preparations for aggressive warfare. The following documents are also mentioned:

NI-8591, Exhibit 409 Volume 19
NI-4471, " 414 " 19

These are also supposed to prove his active collaboration.

The defense, however, proved, particularly on hand of the two last mentioned documents that Dr. Buetevisch did not collaborate with the authorities; on the contrary he was merely one of the numerous collaborators of Gebechem who were occasionally consulted on their special technical fields but who had no executive power nor any knowledge of plans of Gebechem outside their technical fields. Nor did they know the total plans such as the "New accelerated plan" (NI-8839 Exh. 439), the "Karinhall plan" (NI-880 Exh. 442) and the "Emergency plan (Schnellplan)" (NI-8797 Exh. 449).

Evidence:

"His honorary work consisted in that the Gebechem or the experts of the "Gebechem would request him, from time to time, to give his technical advice on newly projected hydrogenation plants or other questions concerning mineral oils. The

same applies to the other honorary consultants who were available to the Gobechem for specialized work... The complete plans of the Gobechem were not available to these gentlemen, since they were secret and were communicated to the experts of the Gobechem only in part, as far as they concerned them specially."

Dec. Buc. 45, Exhibit 89, Book V.

"As honorary consultants of the Gobechem specialists from the whole of the industry were selected, usually from those firms and works specializing in the respective branches. Hence, the honorary consultants included numerous specialists from the IG Farbenindustrie, in conformity with the manifold working fields of IG. In addition there were, in the same way, a number of specialists from other industrial firms as honorary consultants for their special branches.... In all cases it was a question of unpaid extra work which these gentlemen did in addition to their continued main work in the works.

The duty of the honorary consultant consisted of advising the department of the Gobechem that happened to be competent for their particular specialty. The advice concerned the scientific and technical points arising there. The honorary consultants of the Gobechem had nothing to do with the planning work of the Gobechem. They had in no way the right to make decisions.

The individual honorary consultant only attended to his specific field of work in which he was well versed, anyway, by reason of his main profession. Beyond that he could not look into the activities of the Gobechem. Especially he did not know the complete planning of Gobechem."

Dec. Buc. 46, Exhibit 90, Book V.

Further evidence:

Dec. Krmach 28, Exh. 17, Book I
" Buc. 40, Exh. 92, Book V
" " 41, " 26, " V

Prosecution document NI-5934, exhibit 475 volume 22 also proves that Dr. Baotefisch was not a specialist representative of Gobechem.

On page 25 of the indictment Dr. Baotefisch is accused of having been chief of the "Committee for hydrogenation processes" (the Study group Hydrogenation, Welding, and Synthesis is probably meant) and of the Industrial Group Fuels. (NI-6765 Exh. 508, Volume 24).

From this also, active support of the government and knowledge of plans for aggressive warfare are deduced. To begin with the defense proves that Dr. Buotefisch was appointed deputy of the former manager of Wigrü only at the outbreak of war; previously he had only been a member of its Advisory Board (Beirat). The industrial group was not a government organization but an organ of trade and industry which represented the interests of its members in dealings with the authorities. Plans for expansion and employment did not come into its orbit. During the war Wigrü had no executive power either but was given directives by the ministry. The work groups were only formed during the war for the direction of production, and the handling and distribution of production according to official instructions. Participation in the preparations for war and plans for aggressive warfare could not possibly be proved from the fact that a person collaborated with Wigrü, considering its tasks, particularly before the war, which have been clearly defined.

Evidence: Affidavit of the secretary general of the industrial group:

"Dr. Buotefisch belonged to the Advisory Council (Beirat) of the Wirtschaftsguppe Motor Fuel Industry since 1936. When the war broke out Dr. Buotefisch was appointed acting chief of the Wirtschaftsguppe Motor Fuel Industry because of the temporary assignment of the chief to the Reich Economic Ministry and for the duration of this assignment. The Wirtschaftsguppe Motor Fuel Industry was a part of the organization of the industry. The members of the Advisory Council (Beirat) and the chief were appointed by the Reich Group Industry (Reichsgruppe Industrie) according to the legal regulations. . . . Before the war the Wirtschaftsguppe had to administer merely the economic interests of its members in the spheres of production and sales. . . . None of the activities of the Wirtschaftsguppe Motor Fuel Industry had ever justified the conclusion that the mineral oil industry of Germany was preparing for war of any kind.

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"During the war the Wirtschaftsguppe Motor Fuel Industry had the task of exercising surveillance over the particular production levels of the respective enterprises through its separate Arbeitsgemeinschaften (work groups). It was responsible for the allocation of the necessary quotas for repairs and for raw materials such as coal, iron, tar, crude oil, and the like.The Wirtschaftsguppe Motor Fuel Industry had no authority to give orders; it merely carried out its work subject to the instructions of the Economic and the Armament Ministries" Doc. Bue. 44, exh. 96, book V.

Further evidence:

Doc. Bue. 278,	Exhibit 93,	Book V,
" " 241,	" 94,	" V,
" " 247,	" 95,	" V,
" " 43,	" 97,	" V,
" " 33,	" 98,	" V,
" " 35,	" 99,	" V,
" " 234,	" 100,	" V,
" " 223,	" 101,	" V,
" " 225,	" 102,	" V.

Testimony Dr. Bueteftsch transcript German page 8781, Engl. page 8702.

I summarize my statements with regard to the objective definition of the crime as follows: the evidence I submitted refutes in every way the charges of the prosecution not only for the production spheres of Sparte I under the technical management of Dr. Bueteftsch but also concerning Dr. Bueteftsch's activities outside the Farben sphere.

I should like to further confirm this by the following statements concerning the spirit and the aims of my client's sphere of activities which are revealed in my evidence.

The following documents i.a. show that the planning of production of Sparte I and the production itself were not adjusted to a military policy but merely to peaceful industrial purposes.

Doc.	Bue.	71,	Exhibit	57,	Book	III
"	"	78,	"	23,	"	II
"	"	242,	"	25,	"	II
"	"	41,	"	26,	"	II
"	"	173,	"	28,	"	II
"	"	202,	"	29,	"	II
"	"	83,	"	35,	"	II
"	"	85,	"	36,	"	II.

The same is said in the following documents for the research and development work of Sparte I

Doc.	Bue.	283,	Exhibit	38,	Book	II
"	"	282,	"	39,	"	II
"	"	299,	"	193,	"	VII

The merely technical-industrial activity of other industrial companies in whose management Dr. Baetefisch took part and which were never politically oriented or engaged on military preparations is shown in the following documents:

Doc.	Bue.	12,	Exhibit	45,	Book	II
"	"	100,	"	75,	"	IV
"	"	89,	"	76,	"	IV
"	"	88,	"	77,	"	IV
"	"	293,	"	78,	"	IV
"	"	298,	"	79,	"	IV
"	"	18,	"	83,	"	IV
"	"	308,	"	186,	"	VII
"	"	249,	"	205,	"	IX
"	"	272,	"	196,	"	IX

The Hydrogenation plants which were merely licenses of Farben but otherwise quite independent of IG, were not planned or operated by their firms with a view to military aims, but served purely economic purposes. This is proved in the defense documents:

Doc.	Bue.	55,	Exhibit	80,	Book	IV
"	"	19,	"	81,	"	IV
"	"	5,	"	82,	"	IV
"	"	288,	"	184,	"	VII
"	"	303,	"	188,	"	VII
Doc.	Krauch	94,	Exh.	26,	"	II
"	"	23,	"	27,	"	II
"	"	16,	"	28,	"	II
"	"	74,	"	29,	"	II
"	"	97,	"	30,	"	II

Finally, Dr. Bucherich always pursued his activity in German and International combines and administrative organs of the nitrogen and Motor fuel industry as a non-political expert and merely from the economic point of view, above all from the standpoint of world economy.

So he ^{no} had thought of war and preparations for war. This is shown in the documents:

Doc. No. 12	Exhibit 45,	Book II
" " 87,	" 46,	" II
" " 243,	" 47,	" II
" " 44,	" 96,	" V
" " 43,	" 97,	" V
" " 33,	" 98,	" V
" " 234,	" 100,	" V
" " 225,	" 102,	" V.

The state of mind in regard to Count I of the
Indictment

On page 8 of its trial brief the Prosecution states Hitler could not make aggressive war by himself. He had to have the co-operation of statesmen, military leaders, diplomats and business men. Then they, with knowledge of his aims, gave him their co-operation, they made themselves parties to the plan he had initiated".

On page 9 it defines the "subjektiven Tatbestand" of the crime against peace as "the extent of knowledge of the defendants" and, accordingly, on page 76a it alleges:

"that the defendants knew that they were preparing Germany for war which was inevitable or at least highly probable. "

That my client Dr. Baetefisch knew nothing of such intentions to wage war on the part of the Reich Government, that he never even entertained the thought of such a possibility, and that the events that subsequently took place came as a complete surprise to him is proved by the numerous testimonies of his working associates and acquaintances, which have already been set forth in my statements relative to the objective definition of the crime (objective Tatbestand), some of which I again quote at this point:

"The outbreak of the war came as a surprise to all of us."

Doc. Bue 78, Exhibit 25, Book II

"I can state with certainty from our frequent discussions, that Dr. Baetefisch never expected war to break out and definitely not an aggressive war. He was a technician and he devoted himself to plans regarding construction rather than to plans dealing with destruction ..."

Doc. Bue 242, Exhibit 25, Book II

"He never feared that Hitler would have the serious intention of starting a war."

Doc. Bue 202, Exhibit 29, Book II.

"Dr. Bueteifisch never believed that war might break out..... When war actually broke out in 1939, Dr. Bueteifisch was obviously surprised. Even at that time he held a pessimistic view with regard to the outcome of the war."

Doc. Bue. 147, Exhibit 209, Book IX.

The witness Gerlach testified, with regard to a conversation early in 1939:

"I remember that it was Bueteifisch's opinion that it was out of the question that Germany was steering toward war.... He said, 'Both of us know what war means because we experienced it once before' and then he added, 'Do you believe that these people can make a war?' "

Page 9045 of the German transcript, page 8951 of the English.

Further, the Prosecution says, on page 26 of its trial brief:

"It will be seen that by virtue of the nature of the products manufactured and the fact that the contracts and negotiations were mainly with the military, the defendants knew that their production was to build up the Nazi war machine."

So far as the spheres of production are concerned for which my client was responsible, this allegation is unequivocally refuted by an abundance of evidentiary material, from which I quote two passages:

"The production of the Leuna Works before the war¹⁹³⁹ exclusively directed to economic consumption. The main products were nitrogen fertilizer for agricultural uses, technical nitrogen as a preliminary product for the chemical industry, methanol for the plastics and motor fuel sectors, methylamine for the solvent industry... and gasoline for the economy and for aviation. All these products served the peace time economy. There was never any talk on the part of the management of Dr. Bueteifisch in the many technical conferences which I attended of any war intentions, or still less of any intentions of a war aggression, on the part of the government. On the contrary, the development work and the extension of production plants lies entirely in the field of peace time productions. The building up and the extension of the organic productions alone - the manufacture of synthetic fibers and detergents from

1937 - required such a tremendous amount of construction material and labor that there was no room left for the establishment of war production.

Doc. Bue. 78, Exhibit 25, Book II.

"We increased the large-scale production of nitrogen, gasoline and methanol, greatly enlarged our fertilizer production and set up a number of other organic products, all of which were used to fill peace-time requirements. In one of the Nitrogen and Oil Sparte meetings was there every any mention of converting production for a possible war, and it was never even suggested that the government might be planning a war of aggression. Even at our last Sparte meeting, on 25 August 1939, we discussed the peace-time production program, for four more years for nitrogen production".

Doc. Bue. 85, Exh. 36, Book II.

additional material as evidence that Dr. Buefisch knew nothing of a coming war, that he did not expect one and that he was taken by surprise and shocked when it broke out:

Doc. Bue. 284, Exhibit 24, Book II

41,	"	26,	"	II
173,	"	28,	"	II
233,	"	30,	"	II
83,	"	35,	"	II
2	"	41,	"	II
71,	"	57,	"	III
11,	"	59,	"	III
100,	"	75,	"	IV
251,	"	204,	"	IX
147,	"	209,	"	IX
302,	"	220,	"	IX
198,	"	198,	"	IX
252,	"	195,	"	IX
245,	"	200,	"	IX
318,	"	248,	"	IX

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Testimony of Dr. Buefisch, p. 8717 of the German trans.,
p. 8631 of the English
and p. 8790 of the German trans.,
p. 8712 of the English,
and p. 8983 of the German trans.,
p. 8893 of the English.

I have shown that Dr. Buefisch knew nothing of the German war plans. The Prosecution however, tries to establish that the defendants must have known thereof, for on page 10 of the trial brief it alleges:

"These preparations were of a magnitude which surpassed all need for defense, and every defendant. . . well understood to be for aggressive purposes".

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Furthermore, Elias, the witness for the Prosecution, gave testimony to this effect

(Page 1347 of the German transcript, page
1371 of the English)

To this allegation of the Prosecution, too, like the previous one, I gave comprehensive consideration in dealing with the objective crime through numerous examples. I showed that it was unfounded. I shall consider them specifically again at this point, and I point out the following facts:

Farben, as already mentioned, was not an armament enterprise, working directly for the Wehrmacht,

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so that its leading officials could have received direct information concerning the state and extent of German armament. Hence, they were merely in a position to see the development of their own sphere of activity. And so what could my client Buetevisch see? The affidavit by the head of the Sparte Bureau summarizes this with regard to the production of Sparte I:

"After the National Socialist Government had seized power, the ever-increasing production orders of its government departments had to be filled, but, as far as I know, no products which would indicate the imminence of war were ever ordered."

Doc. Bue. 85, Exhibit 36, Book II.

With regard to the production of the separate products, the following is said concerning nitrogen:

"I herewith declare that it cannot be maintained that Germany planned aggressive war on the grounds that there was an increase in the sales of the nitrogen produced by the syndicate, most of which was sold to agriculture."

Doc. Bue. 12, Exhibit 45, Book II.

Furthermore, the development of the "hoko" (highly concentrated acid), production, which the Prosecution submitted as particularly probative evidence, does not warrant any such conclusions, for on the one hand, concentrated nitric acid was particularly needed for other products besides explosives, and on the other, the Government's over-all planning of the output of highly concentrated acids was not known to Farben or to Dr. Buetevisch. What they knew of it until the outbreak of the war was only a small part of the production capacity actually provided up till the end of the war.

Testimony of Dr. Buetevisch, page 8728 of the German transcript, page 8644 of the English.

A technical expert had just as little reason for believing, on the basis of the situation in the mineral oil field, that Germany was intending to wage war.

"German production of mineral oil, including the production from crude oil produced in Germany, was absolutely inadequate for war time demands. According to my recollection, it was not even able to satisfy 50% of the normal demand of peacetime economy..... If the mineral oil industry was issued directives to increase production, this could not be construed by the managers of the plants to show that the government had intentions of waging a war of aggression."

Doc. Bue. 221, Exhibit 62, Book III.

"At the outbreak of war, according to our opinion of that time, the production possibilities and supplies did not suffice by far to cover the war requirements even to a limited extent. At the time we drew this conclusion from the information known to us from French and English war economy literature, in which well-known authorities, the names of which, I am sorry, I can no longer recall today, agreed unanimously that the yearly war requirements for a power at war was estimated at 10 to 15 million tons. Supplies and production did not approach these figures by far in our case."

Doc. Bue. 224, Exhibit 63, Book III.

True, Dr. Bueteifisch was not in a position to have an over-all view of production and stockpiles as were the two government officials just quoted; however, he was in a position to see that motor-fuel production, about which he was informed, was far from sufficing for the needs of the constantly increasing trend to motorization.

Doc. Bue. 101, Exhibit 18, Book I.

Testimony of Dr. Bueteifisch, page 8759 of the German transcript, page 8679 of the English.

But the most overwhelming evidence disproving the allegation by the prosecution with respect to the necessary information is found in what Dr. Bueteifisch saw and knew in the field of aviation fuels. Any person who studies Table 4 of Document Bueteifisch 102, Exhibit 19, Book I, will find it to be obvious that the technical expert Bueteifisch could not have thought of a possible war in view of such conditions of production capacity at home and abroad.

"The development in the world outside Germany.....

was well-known both in Germany and at the I.G. Farben from numerous publications and from their own engine experiments. . . . From this it appears, perforce, that in 1939 Germany was perhaps the least prepared for war in the very field of aviation gasoline".

Loc.Bue. 65, Exhibit 86, Book IV.

Additional evidence to refute the allegation that Dr. Buettfisch could have known from his sphere of activity of the Government's intentions to wage war:

Loc.Bue. 271,	Exhibit 64,	Book III
" " 18,	" 83,	" IV
" " 74,	" 88,	" IV
" " 35,	" 99,	" V
" " 289,	" 117,	" VI
" " 305,	" 188,	" VII
" " 316,	" 249,	Supplementary Vol.I

*testimony of Dr. Buettfisch, page 8779 of the German transcript, page 8679 of the English.

Accordingly, if Dr. Buettfisch could not have arrived at the conclusion, on the basis of the development in the fields of production for which he was responsible, that a war was being planned, it remains to be explained whether he may have obtained such knowledge through his other activities.

Dr. Buettfisch was never a government official and he never had a similar post or associate in any government office, so that he could not have obtained any knowledge of secret orders or regulations of the Government, or any other knowledge of the aims of the Government administration beyond common knowledge in Germany. This is also true with regard to his honorary advisory functions at the office of the Plenipotentiary General for Chemistry (Webechem), according to the evidence which I submitted:

"The complete plans of the Webechem were not available to these gentlemen, since they were secret and were communicated to the experts of the Webechem only in part as far as they concerned them specially."

"The individual honorary consultant only attended to his specific field of work, in which he was well-versed, anyway, by reason of his main profession. Beyond that he could not look into the activities of the Gebechem. Especially he did not know the complete planning of the Gebechem."

Doc.Bue 46, Exhibit 90, book V
also " " 34, " 91, " V

Hence, if Dr.Buetefisch did not even know of the projects of the Plenipotentiary General for Chemistry, it naturally follows that he certainly did not have any information about the basic requirement plans, which were at the Reich Ministry for Economics.

Testimony of Dr.Buetefisch, page 8786 of the German transcript, page 8707, of the English.

It was not until the beginning of the war that Dr. Buetefisch took over the vice-chairmanship of the Economic Group Motor Fuel Industry (Wirtschaftsgruppe Kraftstoffindustrie) until then he was merely a member of its advisory Council (Beirat) - in other words, he had neither special authority nor more than ordinary knowledge of current affairs. Consequently, it is merely for the sake of not omitting anything that I point out that the Economic Group (Wirtschaftsgruppe) likewise could not be considered a suitable source of information concerning aggressive intentions by Germany. In this regard the former Secretary General (Hauptgeschäftsführer) of the Economic Group says:

"None of the activities of the Wirtschaftsgruppe Motor Fuel Industry had ever justified the conclusion that the mineral oil industry of Germany was preparing for war of any kind, to say nothing of an aggressive war ... On the basis of this over-all situation an ordinary business or technical man would never have been able to conclude that preparations were being made for war. The members of the Wirtschaftsgruppe Motor Fuel Industry were, therefore, extremely surprised at the outbreak of war."

Doc. Bue 44, Exhibit 96, Book V.

Dr. Buetefisch was a Military Economy Leader (Wehrwirtschaftsführer). My colleagues have already thoroughly explained the significance of this position, and they have pointed out the purely superficial significance of this appointment. (E.g. Document Ilgner 12, Exhibit 12, Book I).

Before concluding my statements with regard to the state of mind (subjective Tatbestand) of Count 1 of the Indictment, I would like to consider the affidavit by my client which the Prosecution submitted as Document HI 6235, Exhibit 261, in Book 3 and from which it quotes on page 27 of its trial brief:

"Since the German march into Czechoslovakia, that is, since March 1938, it was clear to me that the military policy could be aimed at development into an aggressive war."

In his oral interrogation (page 8791 of the German transcript, page 8713 of the English) my client testified in this connection that the above affidavit represents an extract from his interrogation of which he himself is not the author and that subsequently he ascertained that important sentences and expressions in the two documents do not correspond to one another. The record of the interrogation submitted by the Prosecution under

NI-8637, Exhibit 29

reads, in part:

"Question: Did you realize that Czechoslovakia would only be the first chapter?

Answer: My opinion was and still is that they used bluff....

Question: Then it began with Poland.

Answer: When the abrupt invasion of Poland took place, it was as if scales had fallen from my eyes."

The last quotation shows that the words of Document NI-6235

"since March 1939 it was clear to me....." did not come from the mouth of Dr. Bueterfisch; in other words, it confirms that before the actual outbreak of the war he did not believe in this possibility.

For the sake of completeness I shall consider once more the Prosecution document.

NI-7988, Exhibit 258, Book 10.

This is rebutted by the Defense exhibits

Doc. Buc. 233, Exhibit 30, Book II
" " 310, " 187, " VII.

From the evidence submitted, there is no reason for believing that Dr. Bueterfisch ever received knowledge of any intentions on the part of the leaders of the German government to wage aggressive war.....

or that, in connection with his activities, he could have made any observations or acquired any experience which would necessarily have led him to conclude that aggression was being planned. On the contrary, the evidence submitted by the Prosecution shows that Dr. Buetefisch was completely taken by surprise by the outbreak of the war.

Furthermore, it would be absurd to ascribe such knowledge of the secret plans of the Government to my client since it was proved during the course of these proceedings that even high Government offices and Wehrmacht agencies had no knowledge of the plans of the Government.

This is proved by the testimony cited below of the witnesses:

Hans Fritsche, - Press-Department of the Reich Government (Reichsregierung) page 13,679 of the German transcript, English transcript

General Ruehnermann - Chief of Staff of the Military Economy Office (Lehrwirtschaftsamt) of the High Command of the Wehrmacht, page 13,795 of the German transcript, English transcript page -

Generalfeldmarschall Milch, page 5355 of the German transcript, page 5328 of the English transcript,

and the affidavits:

General Ziegler, Doc. G.K. 95, Defense Exhibit 149

General von Boeckmann, Doc. G.K. 96, Defense Exhibit 150.

Summarization with regard to Count I of the Indictment.

In my statements I have thoroughly considered the charges of the Prosecution with respect to all the spheres of work and activity of my client Dr. Doetefisch. In so doing I have rebutted, through the extensive evidence of the defense, the accusations of the Prosecution that Dr. Doetefisch took part in the planning and preparation of wars of aggression. However, the Prosecution also brings the charge under Count I of initiating and waging wars of aggression. In this connection the Prosecution provided no substantiation whatsoever for the accusation that a war of aggression had had been initiated, and, therefore, no consideration need be given to it. As concerns the accusation of having supported the waging of a war of aggression, it cannot be sustained for legal reasons. In its Judgment against the Major War Criminals the International Military Tribunal found, in the case of Albert Speer, the Reich Minister for Armament and War Production, that "his activities in charge of German armament production were in aid of the war effort in the same way that other productive enterprises aid in the waging of war."; the Tribunal was not of the opinion, however, that such activity represents participation in common plan to wage wars of aggression, within the meaning of the Indictment. If the IMT was of the opinion that, with respect even to the person who carried the highest responsibility for the whole of production during the war, such activity did not fulfill the definition of the crime in the Indictment, then BY NO MEANS can the activity of Dr. Doetefisch DURING THE WAR be considered as a crime in the meaning of the Control Council Law, since his activity was of merely subordinate importance during that period as compared with that of the Minister for Armament.

Closing Brief of defendant

Dr. B u o t o f i s h

Part II

(Plunder and Spoliation)

Count II of the Indictment

Plunder and Spoliation

The legal principles involved in Count II of the indictment have been dealt with by someone else ¹⁾, and I shall refer to this.

I shall confine myself to the concrete charges preferred by the Prosecution in connection with Farben's participation in Kontinentale Oel A.G. and my client's, Dr. Buotefisch's, consequent membership in the Aufsichtsrat of this company. On page 87 (subsection 116) of the indictment, it is stated:

"To lay a basis for future claim to Soviet industrial plants, FARBEN set out to acquire influence in and control of the special corporations through substantial financial participations, and through placing its personnel in key positions in these corporations. FARBEN secured a financial participation in the KONTINENTALE OEL A.G. which Goering had organized as early as March 1941, to exploit the oil resources of the East. The defendant BUOTEFISCH attended the initial meeting

1) Dr. Siemore's Closing Brief for defendant von Schmitzler.

where the organizational details were agreed upon. The defendant KRAUCH was made a member of the Vorstand of KONTINENTALE OEL A.G. and Hermann Abs, of the FARBEN Aufsichtsrat, was made an official of the company."

Subsequently the Prosecution considerably qualifies these vague assertions in its trial brief and states on page 17 (page 14 - Engl. version) of Part II of its brief:

"In the Continental Oil Corporation, Farben held a share of only about 4%, but the defendants Baerfisch and Krauch were members of the Supervisory Board, along with a cast of some twenty of the most important economic leaders of Nazi Germany, including Funk."

Evidence offered by the Prosecution:

NI-2023, Exhibit 1565, book 64,
NI-6453, " 1566, " 64,
NI-10162, " 1567, " 64.

Prosecution Document NI-2023 contains nothing except the foundation meeting on 27 March 1941 of KONTINENTALE OEL and the appointment of the Aufsichtsrat. Aims and objects of the company are laid down in the statutes, Section 2 of which reads:

"The company's objectives shall be the taking over of participations and other business transactions in the fuel field, especially in foreign countries."

Doc. Buo. 133, Exhibit 174, book VII

The enterprise was set up at the instance of the Four-Year-Plan Office and Reich Minister of Economics who invited the big mineral oil enterprises and banks of Germany to participate in this company. Private industry could not disregard this request, especially since there existed no legal reasons for a refusal. The company was controlled by the state. Affiant Notmann (state secretary for the Four-Year-Plan):

"The Reich Ministry of Economics called upon the

six largest German mineral oil firms, including FARBEH, to participate in the founding of the enterprise. In addition, some banks and the HORUSIA Holding Company were admitted.... Reich-owned shares controlled 50 votes each, which indicates the absolutely dominant position of the Reich. The company's board of directors acted on instructions from the mineral oil industry's spokesman: the Reich Ministry of Economics or the Reich Minister of Economics, Herr Funk. The company's Aufsichtsrat consisting of 28 members played no decisive part in the conduct of business."

Doc. Buo. 58, Exh. 173, doc. book VII.

The chief of Farben's former Berlin H.W. 7 legal division testifies:

"On the basis of my dealing with all matters in this field during the war I can make a definite and reliable statement to the effect that the Kontinental Oil A.G. - apart from an investment interest amounting to 4% of the capital stock - was no concern of the Farben, and that Dr. FISCHER exerted his functions in the Kontinental by no means as I.G. Farben official or former I.G. Farben official, but solely as chief of the department for mineral oil of the Reich Ministry of Economics, i.e. as a Government official."

Neither had I the impression during my constant cooperation with Dr. BUECHER and his Berlin secretariat in the mineral oil field that his importance in the Kontinental exceeded that of a normal, and in this case rather unimportant Aufsichtsrat member."

Doc. Buo. 305, Exh. 177, doc. book VII.

Further evidence:

Doc. Buo. 346,	Exhibit 277,	Suppl. doc. bk. III
" " 286,	" 175,	document book VII
" " 291,	" 176,	" " VII
" " 260,	" 179,	" " VII
" " 220,	" 180,	" " VII
" " 154,	" 182,	" " VII.

Prof. Krauch's testimony, German transcript page 5188, Engl. transcript page 5162;

Dr. Buecher's testimony, German transcript page 8827, Engl. transcript page 8840.

The company was founded prior to the Russian campaign. On 22 July 1941, i.e. after the commencement of the Russian campaign, the Reich Minister of Economics put the Vorstand of Kontinental Oil A.G. in charge of the administration of mineral oil plants in the occupied Russian territory. State secretary Neumann's affidavit states the following in this connection:

Buo. II.

"After the outbreak of war with Russia, The Kontinental Oil A.G. was ordered by a decree dated 22 July 1941 of the Reich Ministry of Economics, and without consultation of the stockholders or Aufsichtsrat, to administer the mineral oil plants in the occupied Russian territory and to set up the necessary subsidiary companies."

And further:

"The newly founded companies were ordered to re-start production in the war-destroyed and damaged plants and to supply the fighting front and the country's industry with oil according to the instructions of the competent authorities. The subsidiary companies were financed by Kontinental Oil A.G.- particularly with regard to the procurement of equipment for restoring plants destroyed by the

Sup. II

Russians - by reason of above-mentioned decree.
Active participation in these measures on the part
of Farbon, as stockholders of Kontinental Oil A.G.,
did not take place, as far as I know.

(Doc. Sup. 58, Exh. 173, Doc. Bk. VII)

The Aufsichtsrat was subsequently informed of these measures
at a meeting in January 1942 (Prosecution Doc. NI-10162, Exh. 1557).
(Handwritten) Dr. Buctefisch's testimony, German transcript
page 9930, Engl. transcript page 8843.

Consequently, this constituted a clear order by a German govern-
ment department to the management of the Kontinental. Besides the
fact that according to German law no responsibility whatever for
the said measures particularly so because of the official pressure
behind them, rested with either stockholders or Aufsichtsrat members,
the assertion by the Prosecution that it constituted plunder
and spoliation, is untenable in this connection. According to
IMT judgment, exploitation for criminal activities of the economic
power of occupied countries is worked by two facts. None of them
is not - even without having recourse to further material which was,
at any rate, unavailable to the Aufsichtsrat at the time.

One characteristic is to exceed the requirements of the army
of occupation. If one wished to interpret the provisions of the
Bagyo Rules and Harfaro in the sense that every item produced
must remain with the army of occupation within the country, then
this condition is most certainly complied with in respect of
the mineral oil. Not only ~~was~~ not a single drop of mineral oil
taken out of Russia, but considerable quantities were imported
to Russia in the course of the war.

The other condition of the IMT judgment is that the economic
exploitation be out of proportion to the economic resources of
the country.

This need not be pursued further since this situation does not arise in view of the well-known Russian conditions in the field of oil. In this respect I refer to my argument on 20 November 1947 before the High Tribunal - German transcript page 4073, English transcript p.4045 - where I have expounded on the position in international law regarding the activities under review.

Prosecution evidence NI-8453, Exh. 1566, Doc. book 64, does in no way concern either Farben or my client, Dr. Buetefisch. Dr. Fischer, in that document referred to as general manager ('Generaldirektor') of Farben, had resigned from Farben at the outbreak of war and had since been engaged on a full time basis as consultant on mineral oils at the Reich Ministry of Economics.

Proof:

"In September 1941, by order of the Plenipotentiary for the Four-Year-Plan, Reichsstarshall Goering, I was together with Dr. E.H. Fischer at the office of the Reich Commissar for the Eastland, where Dr. Fischer had to negotiate concerning the administration of the Estonian shale oil pits. In this connection, the Mineral Oil Department of the Reich Ministry of Economics, whose head was Fischer was interested in diverting the Reich Commissar from his wish to bring the shale oil works under his own management in order to prevent arbitrary action on the part of local authorities in the administration of the industry. The reference concerning the possible acquisition of the enterprises by Kontinentoel mentioned in the file notice of the Reich Commissar for the Eastland dated 16 September 1941 - Prosecution Document NI-8453 - submitted to me - and the declaration of readiness to lease them for a long period were tactical means used for this purpose. Farben had nothing to do with the actual negotiations. The designation of Fischer as General Director of I.G. Farben in the document cited is incorrect. I know that Fischer up to my knowledge was never General Director of I.G. Farben, had already severed his connections with the I.G. Farbenindustrie A.G. when he took over the management of the Mineral Oil Department of the Reich Ministry of Economics."

This was long before he joined Kontinental Oil L.G."

Doc. Bus. 57, Exhibit 181, book VII
" " 194, " 240, " I
further:(handwritten:) 305, " 177, " VII

Dr.Buotefisch's testimony, German trans.p.8931,
Engl.trans.p. 8944.

In order to support the theory of participation in spoliation by Purdon and my client, Dr. Buotefisch, the Prosecution introduced additional documents the cross-examination.

Document II-14579, Exh. 1963,

does not bring any new viewpoints. Responsibility for the internal business affairs rested entirely with the various subsidiary companies or the management of Kontinental Oil L.G., which acted - after all - on official orders (Reich Ministry of Economics, Office for the Four-Year-Plan). As in other cases, the Aufsichtsrat was informed afterwards, if at all, through reports of those measures, without any vetoing possibility for its members.

I refer, however, to the following items of evidence regarding the actual course of events.

Affidavit by Blossing:

"All the measures here mentioned took place without collaboration by the members of the Aufsichtsrat. Thus Dr.Buotefisch equally had nothing to do with these individual measures."

Doc. Bus. 338, Exh. 279 (Suppl.Doc.Bk.III)
further " " 349, " 276 (" " " III)
and Dr.Buotefisch's testimony, German trans.p.9000
Engl. p. 8908.

Now Prosecution Doc.NI-16479, Exh. 1900 purports to show that Dr. Buotefisch exceeded the normal functions of an Aufsichtsrat member, in his activities at Kontinental Oil L.G. Apart from the fact that one can hardly term the advisory activity

of a technician a criminal act, the document says nothing concerning the kind of activity. Actually this represents merely a request to Dr. Buefisch to participate in the deliberation of questions of chemico-technical methods; the technical commission itself, however, did practically not become active.

Proof:

Blossing's affidavit:

" At the suggestion of Dr. Fischer, my colleague in the Verstand, a chemical-technical advisory board was to be established in 1932 at the Kontinental Oel A.G., which in an expert capacity was to advise the company in special technical questions. This committee was not to have any authority to make decisions. Their activity was to be one of merely giving expert opinions in special cases for questions of technical processes and mechanical problems, as would have been asked otherwise from an engineering-bureau. Dr. Buefisch was considered as the chairman of this technical committee, which was to be composed of a few technicians from the mineral oil industry, because he was known as one of the leading experts in technical questions in the field of mineral oils. Whether this advisory board was formally established at all, I cannot remember very clearly. I can only remember that this advisory board had been asked in two cases, in particular questions of the Polish and Rumanian petroleum refineries, to give its opinion. Dr. Buefisch did not play an active part in this matter probably because it was not a matter falling into his special field of activity, which concerned itself mostly with hydrogenation- and processing questions. I cannot remember that the advisory board had been called upon by the Kontinental Oel A.G. to give advice in any other questions. This organization therefore, as far as it existed at all formally, died a natural death."

Buefisch Doc. 337, Exh.281, Suppl.Doc.
book III.

Further evidence:

"	"	354,	Exh.282,	"	"
"	"	325,	" 280,	"	"
"	"	335,	" 273,	"	" II

and Dr. Buefisch's testimony, German trans.p.8995, Engl.trans.
p. 8904.

Already during the presentation of evidence concerning Kontinental Oel A.G., the

Doc. II

Defenses submitted a motion pointing out that Farben or its representative, Aufsichtsrat member Dr. Buepfisch, could not be held responsible for the occurrences at Kontinentale Gel. A.G. referred to. The Prosecution had, at the time, referred to the verdict against Reich Minister Funk and had stated that Kontinentale Gel. A.G. had also been mentioned in that verdict. Consequently and principally I should like to add to my evidence that Minister Funk's position in Kontinentale Gel. A.G. was an extraordinary one, since all directives regarding measures to be adopted in occupied Russia by Kontinental Gel. A.G. were issued at his express order. (Vider Neumann's affidavit on page 3 of this brief).

No responsibility whatever can be laid to the Aufsichtsrat member (Buepfisch) or the stockholder (Farben) according to German law and in the meaning the law of 30 Jan. 1937 regarding 'Aktiengesellschaften' and 'Kommanditgesellschaften auf Aktien':

Doc. Bue. 311,	Exhibit 256,	Suppl. Doc. book I
" " 212,	" 257,	" " I
" " 213,	" 258,	" " I
" " 214,	" 259,	" " I
" " 215,	" 260,	" " I
" " 216,	" 261,	" " I
" " 217,	" 262,	" " I.

Prosecution Doc. NI-44577, Exhibit 1931, which my client was confronted with during his cross-examination, is entirely irrelevant. It represents a report to the Reich Office for

Economic Development or Plenipotentiary General for Chemistry by an official of that Office, on his trip to Poland. The report containing, among others, technical data on the chemical processing of natural gas, it was also sent to Dr. Buotofisch in his capacity as honorary technical consultant, as shown by the copy distribution index. The notes on the food situation in Poland which were attached to the report, had absolutely nothing to do with Dr. Buotofisch's activities. Even in case Dr. Bus. did take note, at the time, of that oversetion, it was still impossible for him to exercise any influence on those conditions since neither his work nor his position offered him such a right or opportunity.

Proof:

Affiant Kranzshul:

"Having worked as a specialist (Referent) in the mineral oil section of the Plenipotentiary General for Chemistry, I recall that Dr. Hornswall, who also belonged to this section, made a short information trip to Galicia in 1942 for the sole purpose of studying conditions on the spot, especially in regard to the technical side of the production of mineral oil. If Dr. Buotofisch was sent a copy of the travel report, I am sure it was only to inform him as an expert on mineral oil deposits. The agency forwarded the report to him merely for acknowledgement, and he was not instructed to concern himself with any of those matters in detail since, apart from anything else, the points contained in the report did not fall within the scope of his actual work. Dr. Buotofisch certainly had nothing at all to do with labor or working conditions. It definitely was not the purpose of the forwarded report to cause Dr. Buotofisch to take any steps.

Doc. Bus. 352, Exh. 257, Suppl. Doc. Book III;
and Dr. Buotofisch's testimony, German transcript page 8993,
English transcript page 8906.

In order to refute Dr. Buetevisch's statement made in direct cross examination that he had always endeavoured to preserve foreign property unless there were express orders by government offices to the contrary (statement Dr. Buetevisch transcript German page 6825, Engl. page 6839) the prosecution brought the following documents in the cross examination:

NI-14571, Exhibit 1978,
NI-14572, " 1979,
NI-14497, " 1980,

in order to prove that Dr. Buetevisch had taken part in the dismantling of equipment from the Dutch Nitrogen Plant Sluisdijk.

The evidence of the defense, however, shows clearly just here how private enterprise was forced to utilize for their own plants or branches equipment which for some reason had been confiscated by the government. In this particular case, among other German plants the Linz Nitrogen Plant, of which my client was chairman of the Aufsichtsrat had to take over certain machinery in accordance with instructions. These instructions had been given to the management of the enterprise. Dr. Buetevisch as Aufsichtsrat chairman was consulted in this case by the management only because the new machines for the extension of the plant, already had been ordered from German firms, and the taking over of the foreign equipment meant increased expenditure. Dr. Buetevisch at first was in favour of not complying with the request. But he was informed by the management that official instructions could not be circumvented.

From this transaction, however, it cannot be deduced, that my client is responsible for government measures against the Slaiskil plant.

Proof:

Affiant Steinle:

"I was a Vorstand member of the Stickstoff Werke Ostmark A.G. in Linz/Danube and was actually responsible for the operational management of the Stickstoff Werke Ostmark. In 1942 the supreme planning authorities in Berlin ordered us to expand the nitrogen production from 50,000 tons to 100,000. As it was extremely difficult to procure machinery and the larger part of the Slaiskil plant could not resume operations due to air-raid damage, the Reich authorities ordered that machinery was to be removed from there in order to be used by the industry I, therefore, also discussed this matter with the chairman of the Aufsichtsrat in Linz, Dr. Bueteffisch. At first Dr. Bueteffisch rejected the entire project. However, we had to point out to him that this was an order of the Reich authorities. Dr. Bueteffisch, therefore, called a meeting of the Aufsichtsrat in Linz, in which it was decided that the Stickstoffwerke Ostmark, if they were forced to take over the machinery could do so only if no financial loss would result. The Reich Office, (Reichsstelle) and the Economic Research Association (Wirtschaftliche Forschungsgesellschaft - (Wifo) which was entrusted with the dismantling of the machinery, were notified of this decision which was also acknowledged by the latter."

Doc. Buc. 321, exh. 272 supplementary volume II.

Further evidence:

Doc. Buc. 347, Exhibit 203,
" " 342, " 204,
" " 340, " 205.

Statement Dr. Bueteffisch transcript German page 8993 and 9028,
English pages 8903 and 9036

also interrogation of witness Dr. Rasmeholdt, transcript German page 14710 English page

With regard to Dr. Bueteffisch's actual attitude with regard to the preservation of foreign property in occupied territories I should like to refer to an affidavit of the president of the French Nitrogen syndicate, still in office,

which is significant for Dr. Buetevisch's correct attitude as regards the nitrogen industry of France:

"Especially the German nitrogen industry - in which Dr. Buetevisch was in a leading position at that time - was not put in possession of a single plant of the French industry, and the German representatives of the chemical industries in France intervened on several occasions for the purpose of making available to the French nitrogen industry those raw materials and power (coal and electricity) which were essential for the carrying on of these industries, so indispensable for the survival of the French people."

Doc. Bue. 87, exh. 46, book VII.

Also statement of Dr. Buetevisch, transcript German page 8924, English page 8838.

In the oil field as well Dr. Buetevisch always saw to it that the property of foreign companies did not suffer through confiscation by the German Reich government and interference of Party offices.

Doc. Bue. 353, Exhibit 266, Supplement III

"	"	56,	"	172, Book VII
"	"	309,	"	263, Supplement I
"	"	250,	"	224, Book IX

also statement Dr. Buetevisch transcript German page 8926, Engl. page 8839.

The evidence presented by the prosecution with regard to point II of the indictment is not conclusive. There is no proof that my client Dr. Buetevisch is guilty of plunder and spoliation.

On the other hand, the evidence of the defense shows that Dr. Buetevisch always endeavored to preserve and maintain foreign property as far as possible.

CLOSING BRIEF BUSTEPISECH (EMTISH)
PARTS III-X

Case 6
Defense

CLOSING BRIEF
for the defendant

Dr. Bue t e f i s c h

Part III + IV
(Crimes against humanity).

Handwritten: Perry



Count III of indictment

As far as the charges of the prosecution with regard to this point were directed against the enterprise of Farben as a whole and deal with the collective responsibility of the Vorstand they have been dealt with in detail elsewhere. I should like to refer to

presentation of evidence and closing brief Dr. Helmut Dix for the defendant Schneider to count III of the indictment

also presentation of evidence and closing brief Dr. Pelchmann for the defendant von Kriesen to count III of the indictment.

In this brief count III of the indictment will be dealt with only as far as it concerns my client. It will have to be clarified, therefore, whether Dr. Buotefisch within the scope of his work dealt with problems of labor allocation at all.

According to the legal regulations in force in Germany at that time, the "Law for the Regulation of National Labour" (Gesetz zur Ordnung der Nationalen Arbeit) of 20 January 1934, Reich Law Gazette I pages 45 etc. the so-called "Fuehrer des Betriebes" (Leader of the Plant) was responsible for matters concerning labor and social welfare.

See articles 2, 3, 16 of the law.

Dr. Buotefisch, during his 25 years of activity, never held this position. He was plant-chemist at first, and later technical manager of the Leuna Werke. He supervised the technical planning of Hoechstwerke and Auschwitz. He was technical consultant for the expansion of the Bratac Werke, took part as a technical consultant in the Politz and Linz plants. Finally he was head of various technical commissions responsible for the exchange of experimental data in the field of mineral oils and also for the chemical-technical research and development of the work in Sparta I.

See Statement Dr. Buotefisch transcript German page 8700, 8843, and 8618, 8767, affidavit Dr. Buotefisch, Buc. Doc. 200, exhibit 2, book II.

This specialization of his work and the great responsibility for all technical and technico-organizational problems excluded any activity in the plant management and social welfare within the meaning of the Law for Labor Regulation. Even in his original plant, Leuna, where Dr. Buotefisch had his residence he was not given the position of deputy Betriebsfuhrer (plant manager) because of his manifold activities in the technical field.

Thus, ⁱⁿ the whole 25 years of his work, Dr. Buotefisch never engaged or dismissed a worker; nor did he have any disciplinary jurisdiction over the workers employed in the plants of which he was technical supervisor. Testimony Dr. Buc. transcript German page 8839 English page 8758. He was not informed of details of labor allocation. He was not in a position to give orders regarding the welfare and employment of German or foreign, free or slave workers. That was entirely in the hands of the plant manager (Betriebsfuhrer).

For this reason Dr. Buotefisch did not belong to the executive committee of the advisory ^{Council} (Beirat) of Farben. Nor did he take part in the plant manager (Betriebsfuhrer) conferences.

See testimony Dr. Buotefisch transcr. German page 8837, Engl. p. 8756 ff.
 " Dr. Schneider, " " 7517-7519,
 Engl. p. 7453
 " Dr. Gieseler, " German 7614, Engl. p. 7551.

Dr. Bortmann, manager of the Social department of Farben states:

" I know Dr. Buotefisch especially from my activity at Leuna. His sphere of work at Leuna comprised only technical and purely industrial matters; welfare questions especially problems concerning workers and employees of Leuna were not dealt with by him. To deal with the latter problems, Dr. Schneider, in his capacity as Betriebsfuhrer appointed Herr v. Staden as his deputy. Dr. Buotefisch was not a member of the advisory council (Unternehmens Beirat) of Farben and did not participate in the general Betriebsfuhrer meetings."

Doc. Buc. 82, exhibit 36, book VIII.

Buc. III.

The head of Sparto I and chief plant manager of Farbex stated in this connection:

Question: Did Dr. Buettfisch have anything to do with the work of a plant managerial nature?

Answer: No, this did not belong to his field.

(Trans. German page 7517, English page 7458).

Dr. Polster, head of the Social Welfare Section of the Leunawerke states:

"General plant administration and labor allocation did not belong to his(i.e. Dr. Bueckelisch's) field of activities".

Doc.Buo.284, nrx.24, book II

Further evidence:

Doc.Buo. 146, Zsh.156, Book VIII

"	"	78,	"	23,	"	II
"	"	284,	"	24,	"	II
"	"	242,	"	25,	"	II
"	"	176,	"	27,	"	II
"	"	233,	"	30,	"	II
"	"	243,	"	47,	"	II

Dr. Bueckelisch's position in plants where he had taken care of technical planning or technical consultations was similar.

Dr. Hennig, head of Moosbierbaum:

"Dr. Bueckelisch supervised the planning of the mineral oil plants in Moosbierbaum. He concerned himself with the expedient technical carrying out of the production and issued the appropriate directions; the necessary programs for new constructions had also to go through him for submission of Sparte I in order to receive the approval of the Technical Committee (Tca) and the Vorstand of Farben; he had, however, nothing to do with the actual management(Betriebsfuehrung), nor with the labor allocation or social welfare questions. I know from many discussions, which Dr. Bueckelisch had with me, that he was entrusted in the same manner with the planning of the Leuna part of Sparte I in Auschwitz, as this was an analogous case in technical respects."

Doc. Buo.176, Exhibit 27, Volume II.

Dr. Hoepke, head of the Construction Department Leuna states:

"When the plants Moosbierbaum and Auschwitz were erected during the war Dr. Bueckelisch directed the entire technical planning of those parts of these plants which belonged to Sparte I. Because of the extent and multitude of his duties, however, he could deal only with the outlines. He did not deal with problems of labor allocation here either. For this other executives were responsible.

Doc.Buo.180 exhibit 150, book IX.

Erich Chaudon, Member of the Vorstand of the Brabag, testifies:

"He was always notably reserved whenever problems were dealt with which were not part of the sphere in which he as an expert.....Dr. Bueckelisch was never entrusted with labor allocation problems at Brabag nor did he concern himself

with them on his own initiative. Labor allocation were part of... the work of the plant managers....".

Doc. Buc. 292 exh.245, book X.

See also:

Doc. Buc. 89, Exhibit 76, Book IV
" " 86, " 77, " IV
" " 298, " 79, " IV.

Nor did Dr. Rustefisch have anything to do with labor allocation problems during the war in his position as head of the Industrial Group Fuels. The Chief manager of the Industrial Group Fuels states in his affidavit:

"Plans and problems pertaining to the expansion of the mineral oil industry in Germany and the allocation of labour were regulated exclusively by the Plenipotentiary General".

Doc. Buc. 44 exh. 96 book V

See also: Doc. Buc. 36, Exp. 99, book V,
" " 33, " 98, " V.

The same applied also to the occasional honorary activity of Dr. Rustefisch with Gobechem which was confined merely to scientific and technical problems:

Affiant Dr. Kranepuhl, executive of Gobechem:

"Demands for materials and labor were dealt with at regular commissioner conferences at the Berlin office of the Gobechem. All construction projects of the Gobechem were discussed at these conferences where the commissioners of the plants, appointed by the Gobechem, or the local construction leaders appeared. The same also applied to the case of Auschwitz. Dr. Rustefisch had nothing to do with these details. He did not participate in the conferences of the commissioners."

Doc. Buc.174, Exhibit 138, Book VIII.

Dr. Rustefisch's task in connection with the workers were of a different nature. He was responsible in the last resort for protecting human life in the plants by seeing to it that in the plants for which he was technical manager or advisor and in the planning of new installations all the technical measures were of such a nature as to eliminate any danger to workers lives. In this way he was closely connected with the workers although he was no "plant manager"(Betriebsfuhrer). He knew from his own experience what every worker had to do. As a man of practical experience he was one of the workers.

In case of danger he himself would give a hand.

"Foreman and workers quickly got to know and esteem him because of his comradely nature and because there was no work in the plant where he would have hesitated to lend a hand. He was never absent when technical breakdowns occurred in the plant and set a fine example in case of danger... He made a principle of giving his support to those employees who performed their work efficiently, without taking any interest in their political convictions."

Doc. Doc. 149, exhibit 32, Book II

Dr. Buotefisch took his responsibility very seriously. He made no difference whatever between German and foreign, free or slave workers. He demanded correct and decent treatment of all the workers no matter what their origin. Outside the plant as well he gave his assistance gladly to people in distress and from purely humanitarian considerations he protected his staff from attacks by state or party as far as he could.

Proof:

"On the contrary, he helped each of us when we were in trouble, or in danger, regardless of our political views. Political persecutees could also count on his help."

Doc. Doc. 136, exhibit 31, book II.

"When in about 1936...I was reported to the Gestapo as enemy of the State and was brought by them to Morsburg. Dr. Buotefisch was one of the first to successfully/for my release."
intercede

Doc. Doc. 148, exhibit 32, book II

See also: Doc. Doc. 157, Exhibit 33, book II

" " 146, " 34, " II

Whenever Dr. Buotefisch came in contact with the complement or had opportunity to give his views to the responsible plant managers he expressed his social principles.

The industrialist Uhde says that he knew from various visits which he and Dr. Buotefisch paid to the plants that Dr. Buotefisch

Buo. III

"always had the welfare of the workers and employees at heart."

Doc. Buo. 242 exhibit 25 book II.

In the same vein is the statement of the plant manager of the Linz Nitrogen plant:

"Dr. Buotofisch demanded that the plant managers treat all workers in a fair and decent manner and during his visits he always asked for reports on the conditions of the workers and checked on these reports by making plant inspections, usually twice a year. As chairman of the Aufsichtsrat he was always ready to listen to my suggestions pertaining to all the social institutions of the plant and always provided funds generously so that the social level of the workers could be kept far above average."

Doc. Buo. 254 exhibit 198 book IX.

The well known German Industrialist Hugo Stinnes testifies:

"During our conversations during the war, the discussion often turned to the employment of foreign workers and to their billeting, feeding, and treatment. Herr Dr. Buotofisch always agreed with me that it was self-understood to exert the same efforts on behalf of orderly and decent treatment for his foreign workers, irrespective of their origin, as for the German fellow-employees."

Doc. Buo. 302 exhibit 200 book IX

Further evidence:

Doc. Buo. 138,	Exhibit 31,	book II
" "	146,	" 34, " II
" "	253,	" 222, " IX.

In their trial brief (pages 9 and 11) the prosecution refer to document

NI-6220, Exhibit 1354, ~~Volume~~ 69.

This contains a statement of Dr. Buotofisch which he made in 1947 while under arrest. This is supposed to be evidence of Dr. Buotofisch's knowledge of the involuntary enslavement of foreign workers. Because of this the prosecution accuses him of mistreatment and humiliation of slave workers.

Buo. III

However, I have shown here on hand of the evidence of the defense ^{that} Dr. Buotofisch had not gained his knowledge of labor and employment problems from personal activity in this field. On the contrary, he merely describes general observations in the above affidavit. Some of them are due to faulty memory, and some to faulty observation. He rectified these statements under examination as follows:

"This document (i.e. the prosecution document NI-6220, ozh.1334) contains statements which I made with regard to employment in war industries, and, if I remember rightly, I said in front of the interrogator that I could give the information from memory although I had not been directly engaged in these problems....".

Testimony Dr. Buotofisch transcript German page 5843,
English page 5763.

It went against the principles of a person like Dr. Buotofisch, who made his way in free and liberal activity and research, to force a person to work. For this reason he was opposed to national socialist planned economy on the labor market and to the slave work of prisoners and prisoners of war. He saw, however, that some of these things were unavoidable in times of war. And, of course, he was as much subject to the legal regulations pertaining to the direction of labor as any other industrial executive in Germany. No resistance to the law was possible.

Auschwitz

the Prosecution deals with the building of a Farben plant near Auschwitz as a special point. It says in its trial brief, page 87:

"The defendants took the initiative in the choice of Auschwitz as site for the fourth Buna plant although they were fully informed of the existence of the Auschwitz concentration camp, and the employment of the inmates for the building and operations of the Buna plant had been considered."

chronological
The order of the planning shows from what date Sparte I and, therefore, Dr. Buetefisch had taken part in the project. The project of a Farben plant in Auschwitz goes back to a request of the Wehrmacht and the Ministry of Economics via Goebbeln to Sparte II of Farben for the building of a fourth Buna plant.

The reasons for the choice of the site near Auschwitz have been explained in detail by the defendants ter Meer and Ambros.

see testimony Ambros transcript German pages 7904, 7914,
English pages 7143-7151,
" ter Meer, German pages 7199-7206,
English pages 7143-7151.

According to their statements the decision to build the new Buna plant in Auschwitz was made by the Reichsamt for Economic Expansion on 6 Feb 1941.

"Professor Krauch states subsequently that because of these investigations the Reich Office for Economic Expansion will drop the Norwegian project and decides on Auschwitz as site for the 4th Buna plant".
(Prosecution Exhibit 1414-KI 11 113, Volume 72).

On 16 February 1941 Goering as plenipotentiary of the Four Year Plan issued a decree addressed to Simmer, marked "Top secret", of which the following offices were informed: State Secretary Syrup (Reich Labor Ministry), Munitions Minister Todt,

the plenipotentiary for the regulation of building and construction, and finally the Goebchen. In this decree Goering orders "measures concerning population policies" for the building of the Buna plant Auschwitz. It reads in part:

" I request that the following steps be taken with the greatest possible speed in order to secure the labor requirements and the billeting of the workers engaged on building the Buna plant Auschwitz in Western Upper Silesia which is to start early in April. Kindly inform me as soon as possible of the arrangements, to be made by you in agreement with G.S. (Plenipotentiary General) Chemistry".

(Prosecution Exhibit 1417 - NI 1240 in Book 72).

In prosecution document

NI-11 938, Exhibit 2199, in Volume 93, Goebchen sends a request to Sparte II on 25 Feb 1941 which contains further instructions for the building of the Buna plant. These are orders, then, from the authorities to Sparte II (for Meer and Ambros) in Ludwigshafen of which neither Sparte I nor Dr. Bueckelisch had any knowledge.

The Prosecution tries to argue now that, Dr. Bueckelisch, although he did not participate in the choice of the site, knew of the proceedings.

The documents of the prosecution

NI- 11 783,	Exhibit 1410,	in Volume 72
NI- 11 784,	" 1411,	" 72,
NI- 11 785,	" 1412,	" 72,
NI- 11 112,	" 1413,	" 72,
NI- 11 113,	" 1414,	" 72,
NI- 782,	" 1415,	" 72,

are, however, merely file notes on conferences about the site within Sparte II, of which Sparte I, and Dr. Bueckelisch, had no knowledge (see distribution of copies and list of participants).

Only in prosecution document

NI - 11 784, Exhibit 1411, in Volume 72,

the name of Bueckelisch is mentioned because he had discussed with Herr Josenhans upon the latter's request the technical possibility of a Buna plant and a hydrogenation plant of the Company Bleckhermer; they did not, however, discuss the details of the site. This was an

entirely unofficial discussion which was pursued no further.

Dr. Buetevisch did not take part in the discussions which constitute the main part of document NI-11 784.

On 4 March Gebachem informed Karbon Ludwigshafen (Dr. Ambros) of the wording of a decree of Himmler which he had issued in execution of the "clearing order."

see prosecution Exhibit 1422 - NI-11 064, in Vol. 72 which gives a literal reproduction of the decree of 26 Feb. 1941 and reads:

"These regulations are so comprehensive that I would ask you to use them as soon and as extensively as possible".
(testimony Dr. Buetevisch, transac. German page 8851, English page 8770, testimony Dr. Ambros, transac. German page 7119, Engl. page 7841.)

Sparte I (Dr. Buetevisch, Dr. Duerrfeld) were informed of this letter because they had been instructed, meanwhile, and of February 1941, to join the building project in Auschwitz with the Synol installation which had been planned for Louna for some time. In the project of Sparte I which followed then, the existence of a concentration camp in Auschwitz played no part.

Evidence of the prosecution:

"Originally the Auschwitz Plant had been planned exclusively as a Buna plant, i.e. as a plant controlled from Ludwigshafen. It was only in the course of further planning, after the site of the plant had already been agreed upon, that it was decided on orders of the Reich Office for Industrial Development to construct within the Auschwitz plant also installations for Synol and later for methanol and Isobutyl, the planning of which was the affair of Louna. In this way Auschwitz became a plant of both Sparte I and Sparte II". Loc. Buo 177, Exh. 143, Book XIII.

"At the end of February 1941 Dr. v. Duden informed me at a meeting that the Reich Ministry of Economics and the Reich Office for the Development of Industry (Reichsamt fuer Wirtschaftsausbau) had ordered that the project was to be carried out at Auschwitz, where the Buna work 4 was to be set up, as Auschwitz could be considered as a suitable building site. The first meeting at which the technical details were discussed, took place on 23 February 1941

"at Dr. v. Steden's office at the Lounwerk. at this meeting it was decided, after due consideration, to erect the Buna plant in Auschwitz. . . . Not a word was said by anybody that near the building site at Auschwitz there was a concentration camp." Bus.275, Exh.137 Book VIII.

Affiant Dr. Krenepuhl, Official in charge of mineral oil problems at Gebochem testifies:

"Whereupon the Reich Office for Economic Development considered combining the synol plant, originally planned for Leuna, with the Buna plant. The matter was discussed with Director von Steden (Leuna) and he was induced to plan a plant for 75 000 tons of synol The first projects were submitted during the month of March. In April 1941 the Gebochem declared the project ready for construction". Doc.Bus. 174, Exh. 138, Book VIII.

Testimony Dr. Sustefisch transcript German page 8860, English page 8780. The document of the prosecution

NI-4182, Exh. 1416, in Volume 72,

an affidavit of Dr. Sustefisch describes the transactions merely the way the affiant remembered them. According to this T2A was informed of the request of the authorities and the choice of the building site. Dr. Sustefisch corrected some erroneous statements under examination.

see Testimony Dr. Sustefisch, German page 8851, Engl. page 8770.

By the evidence of the defense the following has been established

- 1.) The Auschwitz site for the erection of a 4th Buna plant was chosen by the authorities
- 2.) The fact that there was a concentration camp near Auschwitz was immaterial for Farben. Farben never considered the employment of prisoners. It was ordered officially by the authorities.
- 3.) ¹⁰Sperte I and Dr. Sustefisch took part in the choice i.e. final choice of the building site.

4.) The order for the building of a Synol plant by Sparte I
in Auschwitz was given by one of the authorities after the
building site for the Buna project of Sparte II had already
been decided upon.

On page 106 of its trial brief the prosecution states that my client, Dr. Buchefisch "took an important part in the building project of 'erben'. This necessitates a clarification of the division of work which had to be done for the part of the plant of Sparte I in Auschwitz. This part of the plant was according to its purpose and construction an appendage of the Leuna Werk; within the scope of the existing organizations it was, therefore, treated exactly like other plants of Sparte I which had been built separately from the main plant.

Ludwigshafen deputed engineer Murr for the first clearing and building work in the building site; as the work progressed he was replaced by Obering. Faust. Building Director Sente of Ludwigshafen was entrusted with the top management of the construction. For the local management of building and assembly work Obering. Dr. Luerrfeld was appointed by Leuna upon the suggestion of Dr. Bauer. Luerrfeld was instructed at the same time to deal with the planning of the general supply plants, and approximately in the middle of October 1948 he took over the entire management of the building site and its general administration as well as the social welfare of the complement.

Doc. Luerrfeld 1450, Exhibit 125
 *testimony Dr. Schneider, Engl. p. 7437, German trans. 7500
 " Dr. Luerrfeld, German trans. 11790, Engl. 11556.

For the production part of Sparte I in Auschwitz Dr. Braus was appointed upon a suggestion of Dr. v. Gaden; to begin with he participated in the planning of the production plants and later he was to take over the management.

*testimony Dr. Braus, trans. German page 9066, Engl. p. 8971.

It was Dr. Bueteffisch's task to adjust the plans for the Leuna part to the total project. As representative of "parte I" he had to deal with the decisions and instructions of his superiors in basic technical problems within the scope of his other activities as outlined above. For all details concerning planning and production the production manager of Leuna, Dr. v. Steden, was appointed.

Testimony Dr. Schneider, transcript German page 7497, Encl. p. 7434
 " Dr. Bueteffisch, " " " 8857, " " 8777.

The building management in Auschwitz was independent concerning local interests and instructions on the building site; it kept in close contact with its mother plant Leuna as far as the Leuna part was concerned. Accordingly the entire top plant management and the Leuna department chiefs concerned were automatically engaged on the building project; on

problems of general plant management and administration:
 the personal- and social welfare bureau Leuna (Sparte management),

technical planning in general outlines: Dr. Bueteffisch

General tasks and details of planning and production:
 Dr. v. Steden (as of 1944 Dr. Giesse).

Problems of machinery and construction technique: Dr. Sauer.

piece work and machine technical special problems: -r. Strombeck,
 the chief machine engineer of Leuna.

technical construction planning Dr. Koepke, chief construction
 engineer of Leuna.

(The positions of the various executives within Sparte I and the Leuna plant management are shown in Doc. Bue. 331, Exhibit 250, Supplement I.)

Evidence:

Affidavit of Chief-engineer of Sparte I, Dr. Bauer:

"Auschwitz was a plant of Sparte II and of Sparte I. Dr. Schneider as well as Dr. Buetefisch attached importance to the fact that the construction of parts of the works belonging to Sparte I was supported and supervised by all competent departments of the Leuna Werke and that also in other ways the building site received all possible help from Leuna". Doc.Sus.259, Exh.147, Book VIII.

The affiant dealt with the same problems in his testimony:

transcript German page 12707, English page 12505.

Affiant Dr. Giessen:

"Dr. Ambros became the exponent of Sparte 2 at Auschwitz, Dr. Buetefisch the exponent of Sparte 1. Chief (Leiter) of the Buna section (Sparte 2) was Dr. Bisfeld, of the Leuna Section (Sparte 1) Dr. Braus. Dr. Buerfeld was in charge of the construction for the entire plant. The liaison men, Dr. Bisfeld and Dr. Braus, worked in close connection with the particular officials (Sechsheerbeiter) on the subject at Leuna and Ludwigsdorf. With regard to the development of their productions they received their directions from the main plants and had to see to it that the plans and demands of the individual Sparte lead to an agreement in Auschwitz. The plant management at Auschwitz was independent and followed only roughly the outlines of Farben's general policies. Consequently the management of the Spartes or the gentlemen appointed by it had very little influence upon local conditions; an influence on details was according to the general customs of Farben neither intended nor at all possible."

Doc.Sus.178, Exh. 274, Supplement 1.

Affiant Dr. Strombeck:

"Dr. Heinrich Buetefisch, as member of the Vorstand, was the final authority for the general planning of the production of Sparte I in the Auschwitz works. according to my knowledge, however, he concerned himself with this only on "broad lines. As his principal activity lay in other fields and he was fully occupied with this, he left the more detailed work and the current decisions to the production manager of the Leuna Werke, Direktor v. Staden, and reserved for himself only the important decisions. Dr. Buetefisch was, therefore, less to be regarded as responsible for the production of Sparte I in the Auschwitz works than Dr. v. Staden. As far as Dr. Buetefisch occupied himself with the Auschwitz works, this concerned only the

chemistry-technical sphere. He was not concerned with questions of works management, in particular the procurement of labor." Doc.Sus. 187, Exh. 151, Book VIII.

Affiant Dr. Koepke:

"When the Moosbierbaum and Auschwitz works were erected during the war, he laid down the lines for the technical over-all planning of the parts, of these works belonging to Sparte I. On account of the size and complexity of his tasks, how ever, he was only able to concern himself with the broad out-lines of policy. Questions of labor allocation did not concern him here either. There were other people responsible for this". Doc.Sus 180, Exh. 150, Book VIII.

Affiant Dr. ⁱⁿWenzel, official charge for the Synol process:

"Dr. Heinrich Butofisch was the key man responsible for adapting the whole of the Synol plant project to the building scheme. Naturally he was only concerned with the over-all planning and aspects. . . . In order to participate in the building project of Sparte I at Auschwitz had been given to all the big departments, such as the construction Department, the Designing Office, the Engineering office. The various department heads and specialists, therefore, frequently visited the Auschwitz plant in order to give technical advice in their fields of work." Doc.Sus. 275, Exhibit 137, Book VIII.

Affiant Dr. Frick:

"Dr. v. Siedem and Dr. Hisszen had been entrusted to discuss on the spot all the details connected with the assembly and operation of plants belonging to Sparte I." Doc.Sus.175, Exh. 152, Book VIII.

Further evidence:

Doc.Sus.173, Exh. 28, Book II
 " " 177, " 143, " VIII
 " " 280, " 148, " VIII
 " " 256, " 149, " VIII
 " " 180, " 130, " VIII
 " " 185, " 153, " VIII
 " " 184, " 134, " VIII
 " " 181, " 155, " VIII
 " " 188, " 156, " VIII
 " " 189, " 157, " VIII

Testimony Dr. Butofisch, transcript German page 8855, Engl.p.8774.

Basic planning problems were clarified by all the executives,
and the resulting credit applications (Programs) were submitted
to IEA for approval by the Sparte manager.

Evidence:

Los.Bue. 112, Bch. 145, Book VIII
" " 166, " 146, " VIII
*testimony Dr. Bustefisch, trans. German p. 8859,
English p. 8779.

All basic questions which concerned both Sparte I and II as well
as general matters pertaining to the building site were discussed in
the so-called building conferences in which Sparte I was permanently
represented by its responsible engineers and experts. Because of
his manifold activities it was impossible for Dr. Bustefisch
to take part in these conferences; it could only be his
task to make occasional visits in order to inform himself of
the course of these conferences. The top plant management of Louna
and Dr. Bustefisch

insofar as they did not attend the building conferences, asked the participants and Dr. Luerrfeld for information on all important points of the agenda.

Evidences:

Loc.Bus. 177,	Exh. 143,	Book VIII
" " 273,	" 144,	" VIII
" " 180,	" 190,	" VIII
" " 173,	" 28,	" VIII
" " 184,	" 154,	" VIII
" " 181,	" 155,	" VIII

Testimony Dr. Schneider,	Transcript German page 7502,	Engl. p. 7437
" Dr. Bueteftsch,	" " 8862,	" " 8782,
" Dr. Braus,	" " 9069,	" " 8974,
" Dr. Luerrfeld,	" " 11793,	" " 11559
" Dr. Ambros,	" " 7940,	" " 7864,

The above statements concerning the organisational arrangements in Auschwitz for the Launa part show that the Farben management did not neglect the building site in any way. On the contrary, it applied all the resources of its reliable and reputed organizations to carry into effect in Auschwitz that the basic principles of the technical progress and social welfare ^{is} inherent in Farben.

The position of Dr. Bueteftsch inside this organization was not that of a plant manager or a person responsible for the executing or supervision of the building project. This will have to be given due consideration in further arguments concerning evidence submitted by the prosecution.

According to page 87 of the trial brief the prosecution has a theory that the defendants, i.e. Dr. Bueteftsch as well, acted upon their own initiative in the procurement and employment of prisoners in the building project. Its documents:

NI-11086, Exhibit 1422, Book 72,
 NI-1240, " 1417, " 72,

show, however, that prisoners were employed by order of the Reich government; this order pledged Farben and the building management Auschwitz to make as much ^{use} as possible of the employment of prisoners.

The building management and subsequently Farben were bound by these instructions. They could not have avoid carrying out these instructions without running the risk of being taken to task and seriously punished for endangering the correct and prompt completion of government contracts.

Consideration is to be given here i.e. to:

the Fuehrer decree concerning the Four Year Plan	dated 18 Oct 1936
Goods Distribution ordinance (Warenverkehrsordnung)	" 18 Aug 1939
Reich Service Act (Reichsdienstgesetz)	" 1 Sep 1939
War Economic Ordinance (Kriegswirtschaftsverordnung)	" 4 Sep 1939
Decree concerning the extensive tasks of the Plenipotentiary for the 4th Year Plan	" 18 Oct 1940

Farben and its functionaries, then, were decidedly in a dilemma.

Once the order of Goering for the employment of prisoners in Auschwitz had been issued the authorities concerned had to contact Farben with regard to compliance with this order. Therefore Farben was requested in the third part of March 1941 to submit the necessary

data on the Auschwitz plant and its labor requirements in preparation for the employment of prisoners. Dr. Bueteffisch did this explaining the purpose, of the building project to the authority who had made the enquiry and was supplied with the desired data regarding labor requirements by the building managers. The affiant Wolff who had been instructed to contact Farben testifies as follows:

"As far as I remember I learned of the contents of a letter from Goering to Himmler at the end of February or the beginning of March, 1941, which contained the order to assist the construction near Auschwitz in Upper Silesia, of a chemical plant planned by the Farbenindustrie A.G. by assigning prisoners from the neighboring concentration camp at Auschwitz. . . ."

"Then, at the end of March, a conference was held in my office in Prinz-Albrechtstrasse in Berlin in which Dr. Buefisch, Dr. Luerrfeld, and another man of the same firm participated as representatives of IG Farbenindustrie, Dr. Buefisch explained the purpose of the construction project. The other two gentlemen gave estimates of the anticipated total personnel requirements Thus this conference did not take place at the initiative of IG Farbenindustrie, and certainly not on Dr. Buefisch's suggestion, but at the request of the authorities named".

Doc. Bue. 169, Exh. 142, Book VIII.

Further evidence:

Doc. Bue. 168, Exhibit 253, Supplement I	
Testimony of Dr. Eustefisch,	page 8852, German transcript; page 8771 of the English
" " Wolff	page 4632, German transcript; page 4612 of the English
" " Faust	page 14312 German transcript; page..... of the English
" " Duerrfeld	page 11857 German transcript; page 11647 of the English

The Prosecution also tries to prove from reports on Farben conferences, that there was an initiative with regard to the employment of concentration camp prisoners, as a matter of fact, however, these conferences were an unavoidable result of orders by Goering and Himmler, as well as of directives by the Gebochem (Plenipotentiary General Chemistry) for the Auschwitz Construction site. This also applies, for example, to the Document, presented by the Prosecution in Rebuttal Document 93,

NI-15 148, Exhibit 2200,
which gives the contents of a discussion on 27 February 1941 with the camp management of the KZ.

The strong governmental influence is also shown in the Prosecution Documents

NI-11 938, Exhibit 2199, Book 93,
NI-11 787, " 2201, " 93.

The basic decisions concerning the allocation of workers, and thereby also of concentration camp prisoners, as well as the resulting individual requisitions, therefore, did not lie in the province of free decision by Farben or its agents. On the contrary, these matters were exclusively in the hands of government agencies, and the employment of labor was decisively influenced by the schedule ordered by governmental agencies for the management had to submit their labor requirements according to these orders, and the extent of these requirements and the dates for them depended on the schedules which were laid down by the government authorities for the particular construction project.

The mentioned orders and directives left no room for any initiative on the part of Farben or its agencies, a circumstance which also did not change in the subsequent years as the Defense Document quoted below proves.

"Berlin, 20 February 1942.

In the above matter it is advised that on 17 February 1942 an agreement was reached between the General Plenipotentiary for Special Questions of Chemical Production and the High Command of the Army We J Rue (Mun 3) whereby the General Plenipotentiary for Chemistry takes over the procurement of these workers for the Farben plants (motor fuel and buna) and for the mine, so that both installation are to be treated as an integrated unit with regard to the allocation of workers."

Doc. Dr. Ambros WI-11940, O.A. Exhibit 221.

"Depends for material and labor were dealt with at regular commissioner conferences at the Berlin office of the Gobechem. All construction projects of the Gobechem were discussed at these conferences...."

Doc. Bue. 174, Exhibit 138, Book VIII.

Testimony of Dr. Duerrfeld, p. 11856 German transcript, page 11 547 of the English.

Auschwitz itself is a good example of the planned economy during the war, which was wholly controlled by the State.

With regard to the result of the endeavors on the part of the construction officials to procure labor, reference has been made to the construction conferences. This also applies to the conferences of the construction officials with regard to the employment of concentration camp prisoners. The Farben management could only take note of these discussions and their results at the construction conferences because, as explained above, they were an inevitable result of the orders from the highest authority. Hence, it would have been utterly meaningless and futile to object to them.

The review of the evidence, however, has repeatedly shown that the employment of concentration camp prisoners, or of compulsory labor of any kind, was entirely undesired by all leading officials of Farben, not only because of the basic disinclination to employ

persons who had been deprived of their liberty, but also, apart from all humanitarian considerations, simply because of the sober realization that, according to common experience, the employment of free workers is always more profitable in the end than that of forced labor, even though on the face of it the wage costs in the latter case seem to be lower. Consequently, Forban invariably on every opportunity, endeavored to obtain free workers, and resorted to the use of concentration camp prisoners only when there was no other possibility left.

Doc. Bue. 259, Exhibit 147, Book VIII,
 Testimony of Dr. Ambros, page 7935 of German transcript,
 page 7859 of the English
 " " Dr. Duerrfeld, page 11860 of German
 transcript, page 11651 of
 the English
 Witness Schneider, page 11581 of the German transcript
 page 11391 of the English
 " Dr. Sauer, page 12704 of German transcript,
 page 12502 of the English
 " Obering. Faust, page 14311 of German transcript,
 page of the English.

In this connection it should also be noted that the employment of prisoners in the Auschwitz Works of Forban was in no sense the first case of their employment in industry, as the Prosecution might allege. In the time under consideration the employment of prisoners in industry had been generally ordered; in the Upper Silesian district alone there were about 40 labor camps, whereas in the whole of Germany there were about 500 labor camps with approximately 500,000 inmates.

Testimony of Dr. Baetofisch, page 8870 of German transcript, page 8787 of the English
 " " Dr. Duerrfeld, page 11952 of German transcript, page 11740 of the English.

The Prosecution has not alleged or offered evidence that my client ever, during the entire period of construction had dealings with an office of the SS or with the camp administration of the KZ in Auschwitz. Concerning the employment of concentration camp prisoners, except for the one conference on 20 March 1941 with Obergruppenfuehrer Wolff.

Evidence:

Testimony by Pohl:

"I never discussed the employment of concentration camp prisoners with Dr. Buetevisch, either in the evenings in the circle of friends, or otherwise."

Page 4249 of the German transcript, page. _____ of the English

also, the testimony of Wolff page 4633 of the German transcript, page 4613 of the English, Doc. Bue 168, Exhibit 253, Supplement I

Furthermore, there is no documentary evidence showing that Dr. Buetevisch personally issued either a general or special directive ordering the employment of prisoners.

With regard to the treatment of workers at the Auschwitz construction site, the Prosecution says, on page 95 of the trial brief:

"The conditions under which the slave laborers, particularly the concentration camp inmates, worked on the Farben construction site and in the Farben factory, were inhumane, and resulted in the death of thousands of human beings."

The Prosecution has tried to support its charges by the testimony of witnesses which purported to show that the conditions as to feeding and housing, and the terms of employment were unfit for human beings. In answer to these charges I refer to the extensive evidence produced by the defense counsel of the Defendant Dr. Duerrfeld, specific quotations from which would be superfluous here. I also refer to the detailed testimony of Dr. Ambros in regard to this point, and to that of the witnesses Dr. Braus, Oberingenieur Faust, Dr. Eisfeld, and many others, who contested the charges.

As I stated previously my client, Dr. Buetevisch, was not engaged in any direct activity of a responsible nature in connection with the Auschwitz construction site, consequently I offer no detailed argument for him in answer to the charges of the Prosecution regarding abuses at that construction site.

Sec. III.

However, I would at least like to call attention here to the fact that, according to the extensive evidence offered by the Defense, and in contradiction to the allegations of the Prosecution, foreign workers and concentration camp prisoners were utilized only for such work which free German workers also had to perform. Not a single instance of special work which would have been reserved exclusively for persons working under forced labor has been mentioned by the Prosecution. The word slave labor, . . . therefore, has utterly no application to the kind of work done by the concentration camp prisoners and foreign workers in Auschwitz.

"They (concentration camp prisoners and foreign workers-) did not have to do any other work than was done by the other employees of the plant."

Doc. No. 175, Exhibit 152, Book VIII.

"According to my impression they were not assigned in any way different from the other workers at all... I saw the prisoners only doing normal work."

Testimony of Biedenkopf, p. 8230 of the German transcript,

page 8158 of the English transcript.

Testimony of Dr. Sauer, p. 12710, of German transcript, p. 12509 of the English

Testimony of Gowerberat Dr. Paye, p. 11759 of German transcript, p. 11527 of the English

Testimony of Dr. Duerrfeld, p. 12004 of German transcript, p. 11774 of the English

Testimony of Dr. ter Meer, p. 7214 of German transcript, p. 7075 of the English.

I now turn to the question of whether and how far my client Dr. Buetevisch is guilty of punishable acts insofar as he was concerned with the higher-level planning of the building project in Auschwitz, and insofar as he had a general responsibility in his capacity of Vorstand member of the I.G. Farbenindustrie.

As I already mentioned at the beginning, with regard to the charge of participation in the general slave-labor program, I refer to the legal argument offered by Dr. Helmut Dix for Dr. Schneider. (Document Books Schneider, VII to IX). As regards the particular conditions in Auschwitz, a case of guilt could be made out for Dr. Buetevisch if, as the Farben Vorstand member responsible for the technical planning, he had neglected his supervisory responsibilities or if he had known and yet continued to tolerate abuses that went beyond isolated cases in other words, which constituted intolerable conditions.

The evidence which has been introduced has shown that Dr. Buetevisch kept himself informed of the important events at the construction site through the leading engineers and chemists engaged in the planning and construction of Auschwitz, as well as through the construction bosses (Baufuehrer) and the Betriebsfuehrer. Among these persons there were, as already mentioned above, all members of the top management of the Leuna Werke, who had the authority to make decisions on their own responsibility and who had extensive experience, so that Dr. Buetevisch could justifiably rely on their judgment. Although these persons frequently had to stop in Auschwitz and although a number of them regularly took part in the construction conferences and received information there of all the important events, none of them had ever any cause during the entire construction period, that is, until 1945, to report

the existence of abuses in Auschwitz in connection with the treatment of workers, which would have called for the intervention of the Farben management, or specifically of Dr. Buete-fisch.

Evidence:

Thus, Dr. Frick, the manager of the methanol factory in Auschwitz says in his affidavit:

"Visits from Leuna were frequently paid to the works and the plants. Thus I met in the Auschwitz plant on several occasions among others Dr. v. Staden.....Dr. Seuer....Dr. Strombeck...Dr. Hoepke .. and in 1944, after the death of Dr. v. Staden, Dr. Giesen....."

Doc. Book 175, Exhibit 152, Book VIII

Dr. Seuer, Chief Engineer, testifies:

"All these persons reported to Dr. Schneider and Dr. Buete-fisch on the progress at the building site, and I do not know that either of them had any reason to report on conditions which called for a change."

Doc. Buc. 259, Exhibit 147, Book VIII.

Affidavit of Dr. Strombeck:

"....neither did I ever hear anything about ill-treatment or other excesses against prisoners or foreign workers in the Auschwitz works. I therefore, of course, never reported anything of the kind to Dr. Buete-fisch."

Doc. Buc. 187, Exhibit 151, Book VIII.

Further evidence:

Doc. Buc. 275,	Exhibit 138,	Book VIII
" " 174,	" 138,	" VIII
" " 172,	" 140,	" VIII
" " 177,	" 143,	" VIII
" " 280,	" 148,	" VIII
" " 180,	" 150,	" VIII
" " 273,	" 144,	" VIII

Testimony of Dr. Buete-fisch, page 8867 of the German transcript, 8784 of the English

Testimony of Dr. Giesen page 7617 of the German transcript 7554 of the English.

Testimony of ter Meer, page 7207 of the German transcript 7150 of the English.

The members of the Engineering Committee also visited the Auschwitz construction site. The visitors in this case were the leading engineers of the entire Farben works, who could claim to have the widest experience of construction jobs of all kinds and who consequently were certainly severe critics in the field of the treatment, of workers as well. They, too, observed nothing

to complain about.

Evidence:

Affidavit by Dr. Sauer:

"The technical commission of Farben, of which I myself was a member, also expressed its satisfaction on the occasion ofvisits to the Auschwitz building site".

Doc. Bue. 259, Exhibit 147, Book VIII.

Testimony of Dr. Bueteufisch, page 8868 of German transcript, page 8785 of the English.

Testimony of Jachne page 10113 of German transcript page 9976 of the English.

Testimony of Biederkopf page 8230 of German transcript 8157 of the English.

Finally, Dr. Bueteufisch himself came to Auschwitz once or twice each year on his inspection trips, and on such occasions^{he} was not able to observe or learn of any irregularities in the treatment of workers, including concentration camp prisoners but found always satisfactory conditions at the construction site.

Testimony of Dr. Bueteufisch, page 8863 of the German transcript, page 8783 of the English.

It was only in 1944 that Dr. Bueteufisch had to omit these visits, since he had to take care of other duties pursuant to a government order, which made it impossible for him to make any other trips.

Evidence:

Doc. Bue. 323, Exhibit 252, Supplement I

Testimony of Dr. Bueteufisch page 8868 of the German transcr.,
" 8788 of the English "

In addition to this thorough control of the Auschwitz construction job by all the competent persons of Farben it was also under the constant supervision of innumerable government agencies. The defense counsel of Dr. Ambros introduced a document on this point which shows about 100 government authorities that were concerned with Auschwitz in one way or another.

Doc. Ambros 425, Exhibit 109.

All these government agencies regularly sent their representatives for inspections and conferences at the construction job, and it is inconceivable that any irregularities or abuses could have escaped the attention of all these visitors.

On the contrary, it must be assumed that at least some of such conditions would have been observed by them and that corresponding reports would have been made to the Farben Vorstand. The Prosecution produced no evidence to this effect, whereas the Defense has produced witnesses from such agencies testifying to the satisfactory conditions at the construction job.

Evidence:

Doc. Bue. 174, Exhibit 138, Book VIII

Testimony of Gewerberat Faye, page 11760 of German transcr..			
"	"	11528 "	English "
"	"	12153 "	German "
"	"	11945 "	English "

All this shows that Dr. Bueteifisch could not have either known or heard of any abuses at the construction job. Naturally, on a large-scale construction job occasional abuses are unavoidable as individual cases. But when on one occasion such a case was reported to Dr. Bueteifisch, it was possible to assure him at the same time that everything necessary had already been done to prevent a recurrence +) Hence, there never was any reason for Dr. Bueteifisch to intervene or to turn in complaints concerning the treatment of the workers to the Betriebsfuehrer of Auschwitz or to the Hauptbetriebsfuehrer of Farben.

Testimony of Bueteifisch, page 8868 of the German transcr.
" 8785 of the English "

Furthermore, the Prosecution has offered no evidence that Dr. Bueteifisch himself instigated ill-treatment of workers or the establishment of unfavorable employment terms. The reporting or punishing of workers for specific infractions, pursuant to legal regulations, was the responsibility of the Betriebsfuehrer; consequently Dr. Bueteifisch was not competent in such matters.

+) Testimony of Dr. Bueteifisch, page 9013 of German transcr.
" 8920 " English "

To establish proof that Dr. Bustefisch nevertheless must have been informed of the details at the construction site, the Prosecution offered in evidence in the cross-examination weekly reports by the Auschwitz construction officials, and supplemented them in Rebuttal Document 93.

NI-14543,	Exhibit	1985,	
NI-11512,	"	1986,	
NI-11532,	"	1987,	
NI-14556,	"	1988,	
NI-14555,	"	1989,	
NI-14549,	"	1990,	
NI-14551,	"	1991,	
NI-14553,	"	1992,	
NI-14514,	"	1993,	
NI-14182,	"	1994,	
NI-15152,	"	2205,	Volume 93,
NI-15253,	"	2206,	" 93,
NI-15256,	"	2207,	" 93,
NI-15254,	"	2208,	" 93.

These weekly report represent weekly journals. Hence, they contain all the particulars concerning the construction job which were recorded to show the progress of the construction project for the information of the technical office. They were not meant to supply factual information to higher-level planning authorities, such as Dr. Bustefisch or Dr. Ambros. True, as suggested by Document NI-15152, Exhibit 2205, some of them contain a distribution list, according to which these reports were to be distributed to Dr. Bustefisch, for example, as the foremost works official in his capacity of "exponent", to a certain extent, of the technical officials in Leuna. But how such reports are to be properly and expediently distributed in practice within the recipient plant is a question of the internal organization, and depends on the purpose of such reports. Since the weekly reports, as already mentioned, were to serve as information for the executive technical offices, they were sent to them directly at Leuna. These offices then had to submit anything of importance found in these reports to their department heads, who in turn had to submit a summary to the works management. Any other method would have been impracticable for this purpose, for it

would have been cut of the question for Dr. Buete-
fisch, as well as for the other officials of the works
management, personally to scrutinize all the reports,
which came in by the dozen every day, from plants,
laboratories, and construction jobs, both inside and
outside of Farben, and to search out the essential
material bearing on their own work and decisions.

Evidence:

Testimony of Faust:

"One must know the nature of the weekly reports.
It was customary in every large construction
site to keep a journal or a weekly record not
only for historical reasons but also for purely
technical reasons. The weekly reports in
Farben were made so that all construction
offices working there might be regularly informed
about the progress of the work. They had to be
informed so that they could know when the
construction job would be in need of one or
the other blue print.

Page 14307 of the German transcript, page 14012
of the English transcript.

Additional evidence:

Doc. Bae. 188, Exhibit 155, Book VIII	
" " 329, " 269, Supplement II	
" " 322, " 270, " II	
Testimony Dr. Buete-fisch, German transcript p. 9014,	English p. 8921
" Dr. Buete-fisch, German transcript p. 9072,	English p. 8934
" Dr. Braue, German transcript p. 9072, English	p. 8977
" Dr. Ambros, German transcript p. 7943, English	p. 7867.

The Prosecution introduced such excerpts from
the weekly reports which it deems suitable to serve as
proof for the inhumane treatment of workers. The
Defense Counsel of Dr. Duerrield introduced other
weekly reports which show that corrective measures
were immediately taken when such conditions were
mentioned. This shows that the construction managers
were concerned with keeping discipline and order on
the construction job, that they took pains to maintain
a fair and decent treatment of the workers, and that
in the case of abuses of any kind they immediately took
proper action to prevent them from becoming a regular
practice.

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A perusal of the excerpts of the Prosecution
exclusively would convey an utterly false impression
of the actual conditions.

Testimony of Dr. Duehrfeld, German transcr. p. 11697
English " " 11686.

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The Prosecution now attempts to connect Farben with the so-called selections of prisoners who worked on the building site in Auschwitz. It contends that these selections were brought about by Farben building managements which designated prisoners who were unfit for work. It also contends that the building management had knowledge of the fact that these prisoners were gassed or used as subjects for medical experiments and that Farben - my client included - must have obtained knowledge of such occurrences. However, no conclusive evidence is submitted by the Prosecution.

As already stated previously, Dr. Buotofisch visited the Auschwitz building site once or twice annually in the course of the years of 1941-1943. During these visits he never heard or learned of the cruelties referred to through observations of his own or through information given to him by persons working there.

Testimony of Dr. Buotofisch, transcript German page 8871,
English page 8788.

The other possibility would have been that the officials who on the basis of their inspections reported to Buotofisch had mentioned these occurrences to him. This, of course, would have necessitated that they themselves know about them. It was furthermore established in the course of the proceedings that not even the members of the local establishment or the building management knew anything about the selections or other cruelties. The evidence introduced by us shows that such members of the Farben staff who reported to Dr. Buotofisch had no inkling of these selections and atrocities in the KZ-base camps so that also Dr. Buotofisch could not learn about it. Also rumors which allegedly reached some of the defendants did not become known to Dr. Buotofisch.

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Evidence:

Testimony of Dr. Duerrfeld, transcr. German p. 11962, 11963, 12010, 12011, English page 11748, 11749, 11781, 11782.

Testimony of Dr. Kraus, transcr. German p. 9014, Engl. p. 8979,
" " Dr. Suotefisch, transcr. German p. 8868, 8871, 8808, English page: 8785, 8788, 8824.

Testimony of Dr. Saur, transcr. German p. 12710, Engl. p. 12509,

" " Dr. Glosson, transcr. German p. 7605, 7615, English page 7535, 7545.

" " Dr. Ambros, transcr. German page 7921, English page 7845

" " Dr. For Ibor, transcr. German page 7222, English page 7164 f.

Typical for the manner in which the Prosecution in this respect compiled affidavits from testimonies of witnesses is the Prosecution document

NI - 10 829, Exhibit 1994.

In the Closing Brief for the Defendant Dr. Duerrfeld this affidavit is very instructively compared with the transcript of the testimony which Dr. Breus has actually given in the Prosecution document NI-14721 - NI 14725, Exh. 2014-2018.

Compare appendix to Closing Brief for Dr. Duerrfeld,
by Dr. Seidl.

Additional documentary evidence:

Doc. Sup. 174	Exhibit 149	Book VIII
" " 172	" 140	" VIII
" " 177	" 143	" VIII
" " 259	" 147	" VIII
" " 290	" 148	" VIII
" " 256	" 149	" VIII
" " 180	" 150	" VIII
" " 187	" 151	" VIII
" " 178	" 152	" VIII
" " 185	" 153	" VIII
" " 184	" 154	" VIII
" " 181	" 155	" VIII
" " 188	" 156	" VIII
" " 189	" 157	" VIII
" " 252	" 199	" IX
" " 147	" 147	" IX.

As regards the Prosecution document

NI-12384, Exhibit

which is concerned with the use of Methanol which Parbon allegedly supplied to the main camp at Auschwitz for the burning of the corpses it must be stated that my client again did not know of this. In the course of the proceedings only was it established that Methanol in small quantities had actually been delivered, not for the purposes claimed by the Prosecution, however, but as fuel.

Testimony of Dr. Buetefisch, transcript, German p. 8733-8734
Engl. page 8649, 8650

Dr. Baerfeld, transcript German p. 12008,
Engl. page 11 778

Dr. Gieson, transcript German p. 7806,

Engl. p. 7536
Dr. Braus, transcript German p. 9074, Engl.
page 8979.

But also persons not working in the camp proper, inspection officials only periodically detailed by the state for an inspection of the works did not feel prompted to intervene because of improper conditions of one sort or another on the site or because news about selections had reached them. This gains particular emphasis by the testimony of trade inspector Vayo who as an organ of the state should have considered it his duty to assure the proper care of the entire personnel and who at this time inspected Auschwitz at least once every month.

Compare: Testimony Vayo, transcr. German p. 11761 - 11761,
Engl. page 11531 - 11531

" Soymanis (20 April) transcript German p. 12151,
12153 ff.

Engl. p. 11944 - 11954

" Oeffner (al. 4) transcript German p. 12256,
12262, Engl. p. 12030,
12034

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The testimony of Dr. Buchdahl that he had no knowledge of the cruelties and had not heard of them by way of rumour even is further supported by the fact that altogether it was practically impossible to learn something about the conditions in the actual concentration camps. Among the wealth of the material introduced in this trial and in all of the earlier ones this is born out, among other documents, by the affidavit

SS-Obergruppenführer (Lt. General SS) Berger, Bus. Dec. 206,
Exh. 231, Book C

Compare the testimony of Peters, transcript German p. 10870,

English page 10531;

SS-Obergruppenführer (Lt. General SS) Pohl, transcr. German
page 4246, English 4214;

testimony of the former ministerial director in the Reich
Ministry for Propaganda, Hans Fritzsche, transcript German
page 14 576, English page 14 336.

Weighing the testimony of Knepek and Duerrfeld the one against the other, one will in any case come to the conclusion that it was impossible for anyone not closely connected to have a suspicion as to what was going on within the concentration camps. This will also lead to an amazing discovery, regarding the false conclusions which can be reached by the general contention of knowledge of what was going on in Auschwitz.

Similar determinations were made in the verdict of Case IV (Pohl et al) also; according to this even officials of the Economic and Administrative Main Office of the SS, who were in charge of the administration of concentration camps, were acquitted on this count of the indictment because they had no knowledge on that score. From the testimonies referred to above it is further evident what horror prevailed at the time to express an opinion and what fate could be expected for him who spread a rumour even on such things of who made a report to that effect. Consequently, my client - even if he had learned something about this which according to the above statements was not the case - could not have done anything at all without placing into jeopardy his own person as well as his family.

But. III.

The evidence has thus disclosed that Dr. Buotofisch does not bear any responsibility for the treatment experienced by the inmates, and that he had no knowledge of it. His guilt under Count III of the Indictment as far as Auschwitz is concerned is, therefore, not established.

Fuerstengrube

On page 109 of the Trial Brief the thesis is presented in support of Count III of the Indictment that through participation in the Fuerstengrube G.m.b.H. Farben incriminated itself in the meaning of Control Council Law No. 10. In that connection it mentions also my client Dr. Buotofisch who as a representative of Farben was chairman of the Aufsichtsrat in that company. In the motion which I presented on 16 November 1947, transcript page 4019 ff, English page 3891, I have already dealt with that charge. My objection was overruled as the Representation of the Prosecution introduced Exhibit No. 12010, Exhibit 1255, Book 81 in the course of the proceedings.

Even though the Prosecution has not specified its charge it may be inferred from its presentation that essentially it is claiming the following:

- 1.) That in the early part of February 1941 Farben succeeded in acquiring a majority participation in Fuerstengrube G.m.b.H., thus to obtain a complete control on the plant operations, on management as well as the distribution of its manufactures; that in like manner Farben controlled the Janina mines transferred to Fuerstengrube on a trusteeship basis in January 1943.
- 2.) that Farben not only had authority to exercise control over plant operations and management of the Fuerstengrube but also exerted such right, assuming the responsibility for

important administrative measures.

3.) ^{as} that regards the management of Puerstengrube G.m.b.H.

Farben was in that respect represented by the Defendant Eustefisch who purportedly made decisions in important matters.

4.) Thereby, so reasons the Prosecution, Farben and Dr. Eustefisch, respectively, also took the responsibility for the treatment of the workers in the mines.

The Prosecution presented its documentary evidence on this score in Document books 80 and 81.

The contentions of the Prosecution are based on wrong premises, however. They were refuted by the result of the evidence dealing with particulars the following results:

Re: Point 1) Farben's participation in the Puerstengrube is based on strictly economic considerations. The merging with the Puerstl. Pless Bergwerk A.G. came about as a result of a voluntary agreement. The contracts were made with the business management of the Pless Company and the trustee of Prince Pless who was interned in England. They were the result of an amicable agreement, without any compulsion or pressure being brought to bear by Farben or a government agency. Pless merely had to obtain the consent of the Trusteeship Office East which administered in trusteeship the stock owned by persons who were interned by enemy powers. This consent was applied for by the Pless Company without Farben's taking any steps.

Both companies were also in agreement that the Janina mines would be

taken over for trusteeship administration by the Fuerstengrube.

Originally Farben had nothing to do with the building project Auschwitz. On the contrary, the coal of the Pless mines were intended for the Hydabreck and Waldenburg plants and for the Buna plants originally ^{planned} for Breslau. As a chemical establishment it was ^a foregone conclusion that Farben became active where coal was involved as Farben did work on the synthesis of coal in the plants referred to. It was therefore quite natural that the Farben Plant Auschwitz also had to carry on negotiations with the Fuerstengrube after the building project Auschwitz had been cleared through legal order (Auflage).

It must be stressed explicitly, however, that the mining of coal and the quantitative consumption in Germany was directed and controlled by the Coal Syndicate which obtained its orders from the governmental mining agencies. In such manner all coal mines in the Upper-Silesian region were in an even measure called on to increase their output and to expand proportionately to the heavy expansion of industry. Farben and the Gelschem (plenipotentiary general for special questions of chemical production) ~~agreed to state their coal requirements. This information on the quantity was passed on to the mining authorities of the~~ basis of the total figures of the Upper-Silesian industry the former established the figures which the planning provided for output and expansion, and they issued their directives to the respective mines. In this respect it was immaterial for the agencies whether Farben was ^{owner} part of the coal or not.

The Chairman of the Reich Association Coal (RVK:Reichsvereinigung Kohle), Pleiger, testifies:

"I was Vorsitzner of the Reichsvereinigung Kohle from the time it was founded in 1941 until spring 1945. Hence I am acquainted with the system and organization of the coal industry in Germany during that period. Based on my expert knowledge I declare the following:
The German coal production program was set up by the Oberste Bergbehörden (highest mining authorities) on the basis of the impact of the Reich Ministry of Economics, later the Speer Ministry. The final figures of the amount to be produced were given to the individual plants by the mining authorities in consultation with the plant managers. Permission for enlargement and/or erection of new plants was given by the mining authorities of the state."

Doc. Buo. 332, Exh. 225, Supplement I to Doc.book.

Additional Documentary evidence:

Doc. Buo. 361, Exhibit 208, Supplement III to Doc.bk.
" " 207 " 182 " VIII
" " 313 " 154 " VIII(annex)
" " 125 " 158 " VIII
" " 124 " 159 " VIII
" " 276 " 160 " VIII
" " 176 " 27 " VIII

as well as testimony of Dr. Buotefisch, transcript German p.8871-8872,

English page 8789-8790

and testimony of Bergassessor Duallberg, transcript German page 12611, English page 12600.

Re: Point 2.) Farben's rights in Puerstengrube G.m.b.H. are laid down in the bylaws of the company. Attention is here called to the fact that the preliminary contract covered by Prosecution document NI-12011, Exhibit 1629,

gives no information on this point since it was replaced by the final statute of Puerstengrube G.m.b.H. (Appendix to Doc.book VIII); Buo. Doc. 313 = 124) already on 26 June 1941.

Sum. III

The affidavit Falkenhahn submitted by the Prosecution as

NI- 12010, Exhibit 1556, Book 81,

which was to prove the legal questions in regard to plant operations, ownership details, and connection of Fuerstengrube with Farbou (transcript page 4389) is unequivocally refuted by the testimony which this witness for the Prosecution gives himself and by the documentary material of the Defense, especially by the testimony and the affidavit of Silcher, a lawyer, the Farbou expert in charge of all questions having to do with the Floss matter.

Testimony of Dr. Labros, transcript German p. 8113-8114,

Engl. page 8038 -80,

Examination of Falkenhahn, transcript German p. 4393, 4395, 4397,

especially transcript German p. 4398 and following,

English page 4374, 4375, 7378, 4379, ff.

Doc. doc. 313, Exh. 134, book VIII (appendix)

" " 94 " 161 " VIII,

According to this the competencies of the Aufsichtsrat, and with it those of Dr. Buetefisch, were restricted by the provisions of the statutes and conformed strictly to the provisions of law in which connection it should be stressed that these competencies of the Aufsichtsrat were more restricted in the final statutes than in the preliminary contract. The paragraphs of the supplementary contract also did not become effective because they were made ineffective by the gentlemen agreement. Also these provisions, by the way, did not serve the purpose of bringing influence to bear on plant operations or business management of the Fuerstengrube, but they merely reserved for Farbou the right to push through special wishes for the selection of suitable coal, or the treatment of the coal. There can be no question of Farbou's taking the initiative in carrying through tasks set for the Fuerstengrube by governmental agencies, or exerting tutelage in matters of business management such as the Affiant Falkenhahn in

Prosecution Document

NI-12010, Exhibit 1556, under point 5

asserts. The business manager Falkenhahn was completely independent in his measure, and in complete independence he made decisions and gave orders for the Fuerstengrube as well as also for the Janina mines. According to Farben's gentlemen agreement the relieving of the business manager Falkenhahn could have come about only in agreement with the Pless A.G. It reveals a great deal that in the affidavit referred to Falkenhahn wishes to bring up Farben also in connection with the Duenher mines of the Pless Bergwerke A.G. It had nothing whatsoever to do with Farben and was under the orders of the Pless Konzern only.

Examination Falkenhahn, at the place stated,

Duellberg, transcript German p. 12811, English p.12600

Doc. Bue.94, Exh. 161, book VIII

Testimony Dr. Ambros, transcript German page 8013, Engl.p.8038

" Dr. Buetefleisch, transcript German p.8871, & 8881,
English page 8788 and 8789.

Re: Point 5.) It is utterly misleading to make Farben responsibility for the business management of the Fuerstengrube and/or the inter-plant measures problems" of any kind (Trial of the Prosecution page 110). The plant management exclusively in the hands of Herr Falkenhahn. According to his own statements the latter at no time received from Farben or from Dr. Buetefleisch instructions of any kind for plant operations or for expansion and production in his field. Dr. Buetefleisch in his capacity as Vorsitz, or the Aufsichtsrat as such, were not at all empowered to give such instructions to the business management because the competency was not vested in them.

Refer to Document Bue. 211, Exh. 256, Supplement I

The last doubts as to the supreme authority style in which Dr. Falkenheim handled the plant operations are being refuted by his own examination,

transcript page 4399, English page 4380.

While the Prosecution quotes from the Falkenheim affidavit

"Only from his (Bueckfisch's) powers did the executive Farben officials Auschwitz derive their authority to take part in the expansion of the Fuerstengrube, Janina Grube or the new installations...."

this version is being contradicted in detail by the examination of Dr. Duerrfeld, transcript German page 12040-12046, English page 11818-11826, as well as by the testimony of Duellberg, transcript German page 12811, English page 12800. The gentlemen Duellberg, Ottomann, Hermann and Kroeger were on the staff of the Fuerstengrube G.m.b.H., and they were direct subordinates of the business management. Dr. Bueckfisch did not have the authority to give directives to these employees. Dr. Duerrfeld at no time belonged to Fuerstengrube; neither he nor Dr. Braus, chief engineer Faust, Dr. Sabelsberg or Deanning were at any time instructed by Dr. Bueckfisch to take an active part in matters of the Fuerstengrube. The authority to take all steps for the production and for the enlargement, as well as the labor allocation required in that connection therefore belonged to the administration of Fuerstengrube exclusively. With their measures they had to keep within the framework of governmental regulations just as much as was the case for all the other establishments. Whenever Farben was connected with a matter it was an act of courtesy because officials of the building management wished to accommodate an enterprise with which one was on friendly terms. It goes without saying that in such incidents the full responsibility remained with the business management of Fuerstengrube. An action of any kind where Farben took the initiative by reason of its participation relationship to Fuerstengrube did

Doc. III.

not take place, according to evidence introduced.

Proof:

Doc. Duerrfeld, 1183,	Exhibit 161	
" " 1183,	" 165	
" " 1228	" 166	
" " 304	" 154	Book VIII
" " 193	" 163	" VIII
" " 256	" 164	" VIII
" " 333	" 260	Supplement bk.II
" " 193	" 163	Book VIII
" " 313	" 154	" VIII (appendix).

Re. point 4.) The documentary material submitted shows unequivocally that the procurement and treatment of labor was exclusively the affair of the plant-management of Fuerstengrube. I stress that also Dr. Bueteffisch never took the initiative to bring his personal influence to bear regarding the procurement of labor, including prisoners. The Aufsichtsrat and so also Dr. Bueteffisch had nothing to do with this matter strictly concerning the plant. According to the law they were authorized to intervene merely when irregularities of the business management became known (section 95 of the Aktiengesetz law on stocks). The witness Falkenhain himself testified, however, that he had not experienced irregularities of any sort in the treatment of his labor, and that he rejects all accusations in that direction. That he is correct in this is brought out by documentary material which the Defense additionally submitted on the treatment of prisoners in the mines.

Compare: Doc. Du. 304, Exhibit 160, Book VIII
 " " 306, " 163, " VIII page 103.

In fact, Falkenhain first claimed in his affidavit that he did not concern himself with the allocation of prisoners. In his personal examination before the Tribunal he refuted this himself, however. Also the testimony of

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Dr. Duellberg proves the incorrectness of the statement in the affidavit of Felkenhahn. The allocation of prison labor for work in the Guanter mines which were owned by the Pless Konzern exclusively was still more the affair of the business management of that Konzern.

From all of this it follows that for my client it is entirely impossible to comment on the documents introduced by the Prosecution in books 80 and 81 which deal with the treatment of labor in the mines as these facts never became known to him. From the documents themselves it is clear that this involves material pertaining to inter-office correspondence of the Fuerstengrube and/or the Fuerstengrube with the Farben plant at Auschwitz.

Doc. Buo. 333, Exhibit 268, supplement I
" " 306, " 169, " book VIII.

From the documentary evidence introduced it thus follows that
in connection with Fuerstengrube my client cannot be convicted
of any action charged by the Prosecution.

The argumentative examination of documentary evidence sub-
mitted by the Prosecution and by the Defense on Count III of
the Indictment has shown, therefore, that the Defendant Dr.
Baotofisch is not guilty of any of the offenses with which he
is charged.

Closing Brief for Defendant

Dr. B u s t e f i s c h

(Part IV)

(Membership in the SS).

APPENDIX TO PART IV
" MEMBERSHIP IN THE SS "

OF CLOSING BRIEF FOR DEFENDANT

Dr. Bue t e f f i s c h .

Local-theological Opinion

by

Dr. J. K R A U S , ^{Regular} Ecclesiastic Professor

at Gutenberg University
in Mainz

(Excerpt)

"Whenever credible evidence permits of two reasonable
conclusions, namely guilty and not guilty, latter must
be chosen".

Count IV of the Indictment

Membership in the SS.

With regard to the alleged SS membership of my client, Dr. Buetevisch, the facts will, first of all, be shown in their proper light according to the evidence.

The Facts.

=====

At the time of the government's assumption of power, Dr. Buetevisch was not a member of the Nazi Party. He has, moreover, attempted to keep out of the movement as soon as possible. Dr. Buetevisch was non-political; throughout his professional life he was never active in politics. At the end of 1936 or the beginning of 1937 he, together with other members of Leuna's plant management, was requested by the district leader (Kreisleiter) to join the NSDAP. His membership application was, however, refused by the Party Tribunal on 29 October 1937 with no reasons being given:

"In accordance with existing regulations it is not permissible to state the reasons for this decision."

Buetevisch Doc. 209, Exh. 195, Doc. Book IX.

The refusal was due to Dr. Buetevisch's former membership in a lodge.

At that time Dr. Buetevisch was member of various Party formations. Such formal paying membership resulted automatically from decisions of the board of directors of Leuna Werke:

Vide: Bueteifisch Doc. 252, Exh. 199, Doc. Book IX;
 " " 245, " 200, " " IX;
 Dr. Bueteifisch's testimony, German transcript
 page 8890, English transcript page 8809,

Dr. Schneider's testimony, German transcript
 page, English transcript page
 (cancelled):

Joining the Party.

In spite of his indifferent and critical attitude toward National-Socialism, Dr. Bueteifisch could not avoid joining the Party. On this point it is argued that there also were industrialists and technicians who had not been in the Party. This depends, however, solely upon local conditions and the position of the person concerned. The refusal by the Party Tribunal had, in particular, put Dr. Bueteifisch into a most difficult position.

Dr. Bueteifisch's testimony, German transcript page 8891,
 English transcript page 8810.

Affiant Steinle, Dipl. Ing., until 1940 a Leuna chief engineer, testifies:

" At the time of the (Nazis) advent to power Dr. Bueteifisch did not belong to the National Socialist Party. Later, in 1936, as managing director of the concern, he was requested by the Kreisleiter to join the Party; according to what I heard, however, his request for membership was rejected by the Party Court since in former years he had belonged to a masonic lodge. This rejection naturally became generally known and put Dr. Bueteifisch into a difficult position with regard to the Gauleitung and Kreisleitung and above all with regard to the workers of the plant, the more so since all the other members of the plant management had meanwhile joined the Party.

Bueteifisch Doc. 254, Exh. 196, Doc. Book IX.

In consequence Dr. Bueteifisch was impeded considerably in the exercise of his duties as leading technician of one of Germany's largest plants since it was imperative to maintain contact with the increasingly influential Party representatives in the

public administration who sought to gain influence upon the plant management. In the course of frequent meetings, Herr Kranefuss, a Vorstand member of Brabag, advised Dr. Bueteifisch who since the beginning of 1938 also belonged to the Brabag Vorstand as technical adviser, to overcome the difficulties by submitting an application with a special plead for admission to the Party. Kranefuss was a higher SS leader and had connection with leading Party officials. In this situation there was but one choice for Bueteifisch: He had either to resign from his exposed positions as technical chief of the large plant or accept formal membership in the Party. This explains Prosecution Doc. NI-6710 F, Exh. 1972, which my client was confronted with during his cross-examination; if the reply admits Dr. Bueteifisch to full NSDAP membership without qualification in spite of his former lodge membership, it does so only on account of his having resigned from the lodge prior to 1933.

Dr. Bueteifisch's testimony, German transcript page 8891 and 8895, English page 8810 and 8814.

Through notification dated 20 December 1938, Dr. Bueteifisch was admitted to the Party. His professional career, his industrial and technical positions had nothing to do with the membership in the Party or Party formations. Dr. Bueteifisch's success was entirely due to his work and ability in his professional field to which he devoted his full time and energy. His fundamental attitude and behaviour in respect of disreputable Party measures never changed because of his joining the Party.

Dr. Buetelesch did not study the Party program; nor did he read Hitler's "Mein Kampf"; he was more than fully occupied by his work - he was an engineer, not a politician. He judged life by its practical results, and where according to his common sense there appeared abuses, he tried to remedy them to the best of his ability. Dr. Buetelesch has never held an office in the Party or government; his Party membership has never become publicly evident. He wore neither badges nor uniform, and the majority among his colleagues did not even know that Dr. Buetelesch belonged to the Party. Throughout his life he remained a scientist and engineer without any political coloring. This behavior and attitude is supported by a wealth of Defense evidence, some quotations from which will be here presented:

Affiant Dr. Knoth, Hamburg patent lawyer:

"This career of Dr. Buetelesch, which had reached its climax long before the National Socialist regime started, was exclusively due to his special achievements in his sphere of work..... His political views were guided absolutely by these professional trends of thought. He declined on principle all programs dealing purely with party politics..... At first, I was surprised that Dr. Buetelesch had joined the Party, but at that time, I could understand his reasons very well. As a patent lawyer I dealt with numerous industrial undertakings and it was on these occasions particularly that I heard similar statements repeated by leading officials..... I know that many industrialists decided to take this step lest the management of their undertakings would be turned over to Party members only. Under these circumstances, it was a matter of course for a man like Dr. Buetelesch, who was fully absorbed by his work and was no politician, not to refuse any longer to

join the Party.

Doc. Bus. 202, Exhibit 29, Book II.

Affiant Dr. Wissel:

"I know therefore of his intrinsically opposing attitude towards National-Socialism and of the necessity of his joining the NSDAP at a later date solely for reasons of his exposed position, an unavoidable measure if he did not want to lose his business influence. Despite his outward membership Dr. Buete-fisch has always declined to act contrary to his opinions or to keep silent when he felt bound to resist undue interference of the Party."

Affiant Dr. v.d. Heide:

"This basic factual attitude was everywhere apparent in Dr. Buete-fisch's life. He was not interested in political questions, not to mention the fact that he had no time left in his strenuous professional days' work to occupy himself with politics. Then towards the end of 1938 he was compelled to join the NSDAP because of his leading position in the I.G. He always kept aloof on principle of political questions even then and he only came forth when it was up to him to fight against abuses or to lead to triumph the real issue in opposition towards men who were nothing but politicians and attached more value to the political than to the professional side of the issue."

Doc. Bus. 210, Exhibit 206, Book IX.

Affiant Seiler:

"The Party-membership, effected only in 1938, Dr. Buete-fisch considered as an affair, that was recorded on paper only. He definitely never took part in any Party-meetings and I had the permanent order to excuse his absence on the grounds of official business."

Doc. Bus. 137, Exhibit 210, Book IX.

Affiant Kuntze:

"During the 6 years of my employment with Dr. Buetevisch I gained the impression that he had little interest in the political questions of the day. He was only interested in his scientific and economic work. In view of this attitude he did not attach any importance whatever to the question, whether his co-workers were members of the Party or not. On the contrary, he disliked very much to see his co-workers take part in politics..... Dr. Buetevisch's objective attitude placed him frequently in a criticising and opposing relationship to the National Socialist regime. I remember a few occasions when he voiced his rejection of measures of the National Socialist State and the party quite frankly and sharply. "

Doc. Bue. 143, Exhibit 211, Book IX.

Affiant Dr. Kleinboehl:

"Dr. Buetevisch is a non-political personality. He has devoted his life to technical science, particularly research in new fields, and to the organizational development of the domains entrusted to him. His successes in these fields he has attained through unstinted effort and outstanding capacity. Dr. Buetevisch held an indifferent attitude towards the National Socialist movement. His joining the party in 1938 was prompted by purely professional considerations. He maintained the non-political manner of his actions after this step as well as before. Wherever he met abuses of the National Socialist regime, he openly expressed his opinion on them. He also always had an understanding for criticism of National Socialism which was made by other persons."

Doc. Bue. 142, Exhibit 217, Book IX.

Affiant Hugo Stinnes, coal industrialist:

"For this reason, I consider myself qualified to pass judgment on the basis of my impressions on the inner attitude of Herr Dr. Buetefisch toward National Socialism. I have always judged a man from my impression of him as a whole and from his attitude. Thus, I did not ask Herr Dr. Buetefisch, first of all, whether he belonged to the Party, or whether he paid contributions to a formation, or whether he had been honored in any other manner by any unit of the Party whatsoever. I knew that this was often prescribed by local conditions or by other professional considerations. Through my conversations I soon learned to know who Herr Buetefisch was. I have often talked with him about things, which I only mentioned to people of whom I knew that they thought as I did, and that they did not judge the political and economic situation other than I did. . . . Moreover, it appears essential to me to point out, that to the end of the war, in spite of our frequent meetings, I never knew, as far as I can remember, that Herr Dr. Buetefisch belonged at all to the Party or to one of its formations. In any case, my impression of him has always been that he was a very able man of economy, who was not infected with National-Socialist ideology."

Doc. Bue. 302, Exhibit 220, Book IX.

Affiant Paul Schneider, special consultant (Fachreferent) at the Reich Ministry of Economics:

"I have never heard anything about political activities on the part of Herr Dr. Buetefisch. I can most definitely assure that I have never seen him, either in uniform or with the insignia of the Party or of one of its organizations. Dr. Buetefisch did not allow himself to be influenced by Party agencies or ideologies in his professional work either; on the contrary, he frequently did not refrain from criticizing sharply National Socialist actions which were contradictory to his unbiased technological mind."

Doc. Bue. 279, Exhibit 221, Book IX.

Affiant Dr. Zorn:

"Actually Dr. Buetevisch's attitude towards the NS-regime was critical and reserved. So much the greater was my surprise when I learned from him one day that he was a party member, all the more because he had been a member of a lodge. At that time he explained his entrance with the fact that he had deemed this step necessary for general reasons with regard to the works in order to be able to protect the Leuna Works or the I.G. Farben Industry even better from the interference and the encroachments of the party.

Affiant Consen:

"Thus I am able to give the most precise information about Dr. Buetevisch political attitude. His life was filled with tasks of a technical nature. He was a chemist by profession. Politics and in particular Party business were far removed from him and he took little interest in them. The fact that, in spite of this, he joined the Party in 1939 was an inevitable necessity for a man in an economic position as technical director of the Leuna plant in the circumstances prevailing at the time. . . . Dr. Buetevisch was regarded as one of the foremost experts in the field of mineral oil, especially of hydrogenations influence his official decisions and tasks. He severely criticized National Socialist measures.

Doc. Sue. 250, Exhibit 224, Book IX,

Wids: Dr. Buetevisch's testimony, German transcript page 8896, English transcript page 8815.

Dr. Buetevisch's critical attitude to certain disreputable Nazi methods his open criticism and his behavior as well as his attitude concerning the Jewish question, are made evident by further evidence:

"During the National Socialist period we also frequently discussed the contemporary regime. Dr. Buetevisch's view on it was consistently critical and negative.

He especially criticized the compulsion pervading all spheres, the suppression of free opinion, the rudeness and tactlessness with which foreign statesmen were assailed in speeches, and the handling of the Jewish problem as manifested in measures against Jewish fellow employees and in the looting of Jewish shops in November 1938."

Buetevisch Doc. 198, Exh. 198, Doc. Book. IX (page 8).

"I have no knowledge of any political activities of Dr. Buetevisch; his work would hardly have left him time for such activities. On the other hand, I know definitely that he was strictly opposed to the racial principles of National Socialism; this is proved by the fact that he continued our friendly relations and repeatedly visited my family, for the last time at the beginning of the war, about in 1940. My wife is Jewish and under the National Socialist regime it was dangerous to associate with me or my family."

Buetevisch Doc. 236, Exh. 212, Doc. Book IX.

"I do not know, however, of various statements and actions of Dr. Buetevisch which were in opposition to measures based on the principles of National-Socialism, as for instance the persecution of Jews."

Buetevisch Doc. 186, Exh. 202, Doc. Book IX.

"We frequently discussed everything that affected us, hence also the National Socialist regime. In this Dr. Buetevisch always took a negative attitude. Above all, he condemned the methods of the regime, its attitude towards the Jewish problem - he was a declared opponent of anti-semitism, the boss rule and in this connection in particular the German Labor Front's encroachment, biased and unjustified in his opinion, upon the economic enterprises, furthermore, the suppression of the free expression of opinion."

Buetevisch Doc. 147, Exh. 209, Doc. Book IX (page 35).

"When it became known in Leuna that I was half Jewish and the Gestapo bothered me, I and my family were proscribed in Leuna. Most people did not want to know us any more and did not greet us any longer. Even our best friends did not dare to enter my house. Also the large circle of my daughter's girl friends decreased considerably. Only a very few continued to be friendly with my daughter; amongst them there also was the daughter of Dr. Buetevisch. Considering the general pressure which at that time was exercised by the National Socialists, and Dr. Buetevisch's position in the Leuna works, it was surprising that he should continue to allow his daughter to be friends with my daughter. Considerable courage was required for such a behavior which showed a non-National Socialist attitude.

The board of managers of the Leuna works, of which Dr. Buetevisch was a member, tried to keep me in my position there as long as possible, but they were powerless in front of the Gestapo's omnipotence. Although I had to be dismissed without notice, the Leuna works still paid me the salary for my lawful term of notice; also the total expenses for my removal were granted to me by the board of managers. This shows that the directors surely did not hold anti-semitic views."

Buetevisch Doc. 151, Exh. 215, Doc. Book IX.

"In my capacity of member of the Vorstand of the Hydrierwerke Poolitz A.-G. I had the opportunity to observe how the Party during the first years of the war tried to get

seats on Aufsichtsrat of the Company so as to gain a corresponding influence. Thanks to Dr. Buete-fisch's fearless demeanour at that time these endeavours of the Gau- and Kreisleiter Stettin, Pommernia, remained unsuccessful. Notwithstanding the fact that he had to expect personal inconveniences Dr. Buete-fisch rejected the demands brought forth by the NSDAP, also in writing, with the result that the Party was unable to have one of its members appointed to the Aufsichtsrat of Poelitz hydrogenation plant."

Doc. Bue. 249, Exhibit 205, Book IX.

Dr. Buete-fisch's struggle against the German Labor Front's arrogant transgressions concerning private enterprise, is confirmed by his legal associate, Attorney Silcher:

"Having worked together with Dr. Buete-fisch at the I.G. for several years in the mineral oil field, one of the main impressions I gained was that Dr. Buete-fisch always tried to apply common sense to economic matters and that the economical line which the representatives of private enterprise and Farben in particular, as against the totalitarian and political aims of State and Party, had been following, was maintained..... In the numerous negotiations with the representatives of the DAF company, we - headed by Buete-fisch - represented energetically our private economy line and our claim for complete equality of rights, although the gentlemen of the DAF stuck obstinately and intensively to their efforts to have superiority conceded and also employed political pressure in order to achieve this purpose by referring again and again to the Fuehrer order in question and by calling our resistance a resistance against this Fuehrer order, not without properly pointing out the danger of such an attitude. This prevented Dr. Buete-fisch just as little as it did us, from defending obstinately our line and our claim for equality."

Doc. Bue. 309, Exhibit 265, Supplement Doc. Book I.

Nor was there any change, during the Nazi period, in Dr. Buete-fisch's attitude to the church. The vicar of Leuna parish states:

"During the time that the Church suffered greatly through attacks directed against her by the National Socialist Party and its freedom of action was impeded, Dr. Buete-fisch openly professed himself to be a member of the Church..... Through my office I had social contact with Dr. Buete-fisch as well as with his family, and have also been informed by third parties that he used his influence to the benefit of the Church, whereas others thought it opportune to disown the Church."

Doc. Bue. 150, Exhibit 203, Book IX.

Further evidence regarding Dr. Buete-fisch's basic attitude to the Party doctrines:

Doc. Bue. 252,	Exhibit 199,	Doc. Book IX
" " 236,	" 212,	" " IX
" " 155,	" 213,	" " IX
" " 154,	" 215,	" " IX
" " 151,	" 216,	" " IX

and Prof. Gorlach's testimony, German transcript page 9037-9047, English transcript page 8946-8956.

Appointment to honorary SS officer.

In view of the basic attitude to the Nazi movement on the part of my client, Dr. Buete-fisch, which is supported by a wealth of evidence, the question remains to be answered as to the reasons for this honorary appointment.

In his student days, Dr. Buete-fisch had made the brief acquaintance of Kranefuss. In 1934 he met him again in Berlin; Kranefuss was a higher SS leader and had been appointed a Brabag Vorstand member by Reich Minister Schaech. Dr. Buete-fisch had to conduct license negotiations with this firm.

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Kranofuss who had contacts in the higher circles of the Party offered Dr. Buotofisch his help should it become necessary to shield third persons from encroachments by the Party. During the entire period of his contact with Kranofuss, Buotofisch made repeatedly use of that offer and he intervened on behalf of persons who were persecuted for racial or political reasons.

"...On innumerable occasions Kranofuss has been approached by all kinds of people of his personal or professional acquaintance to intervene on behalf of people who had been arrested or who had incurred some one's displeasure. However Kranofuss was convinced that those persons had been treated unjustly he always tried to help most unselfishly, using all his influence with Himmler or the offices subordinated to Himmler. Dr. Buotofisch has also frequently approached Kranofuss for help on behalf of third persons."

Doc. Buc.392, Exhibit 243, Book X.

"Aside from this Kranofuss had already helped Buotofisch readily- which I know - when he approached him for help to this or that person who was in distress. Thus I know from my own experience that upon the request of Buotofisch Kranofuss helped to arrange for the settlement of the escape taxes incidental to the emigration of Dr. Jacobi, of which I made mention once before. He also was able through Kranofuss to have things lined up for procuring passes after his emigration, for Jacobi and his wife to come to Germany."

Testimony Dr. Oster, transcript German page 10910,
English page 9913

also compare affidavit of physician Dr. Braitmaier,
Doc. Buc. 260, Exhibit 242, book X, page 51(58).

Affidavit Annerie Baumann:

"In spite of his knowledge of my husband's non-aryan descent, he kept him in his position in the Louma Works in the face of the strongest opposition up to October 1938. Beyond that, he got him a position with the Standard Oil (N.J.) in the USA, in order to prevent him from being seized by the Gestapo and to protect him and his family against economic distress. When in 1939, before his departure from Germany, my husband was arrested by the Gestapo, he continued making every effort to help him. After my husband's death he prevailed upon the Louma Works to pay a pension to me, which I drew up to 1 May 1945."

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Doc. Bu. 156, Exhibit 206, book IX.

Affidavit Dr. Piers

"The staff of my associates included also Herr Dr. Danath, whose father was a Jew. Under the law I was bound to remove Herr Dr. Danath from the Ludwigshafen plant. In the years between 1937 and the collapse I encountered in this matter the greatest difficulties from Party quarters, which I best carried by contacting Herr Dr. Bustofisch, and we both tried to find ways and means to keep Herr Dr. Danath in his position."

Doc. Bu. 246, Exh. 207, Book IX

Testimony of Professor Gerlach:

"Very serious, however, was the situation in 1938 and at that time I turned to Bustofisch. Bustofisch told me at that time - it was in the fall of 1938 - that he would need exact data; then he would try to do something. Thereupon I gave this information to him and some time later he once said to me: "Has the matter been straightened out?" and I could only answer him: "I have heard nothing more of the entire matter". In such cases one made it a point not to ask how matters came about.

Question: Did this matter jeopardize your existence as a university professor?

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A. : Yes one had demanded my dismissal, namely through Johannes Stark the President of the Reichsanstalt."

Testimony of Professor Gerlach, transcript page 9047,
English 8956

Dr. Earl Schulz who was persecuted because of race defilement testifies:

"As the preparations for my emigration dragged along and seemed unbearable to me, I repeatedly visited Dr. Bustefisch. At one of these meetings, it was at Herschburg, he told me somewhat indignant because of my constant proddings: "Do you by any chance think you are the only one who wants to get out of here? It is a pity, all of us can't go to Brazil. Anyhow, you are extremely lucky to get out of here...."

Herr Dr. Bustefisch who, knowing of the facts I was accused of, gave me twice the opportunity to leave Germany, therefore has twice violated the Law of Race Defilement. I have no doubt that in doing so he saved my life twice."

Doc. Bun. 167, Exh. 219, book IX, p. 58/9

All of this happened until 1939 when the relationship between Dr. Bustefisch and Krahnfuss rested on no other foundation but simple professional cooperation. They never associated closely with each other, personally or socially.

Admission into the SS

In the first months of 1939, Krahnfuss who as a higher SS leader had the right to make suggestions to SS for nominations as honorary leaders, offered to Dr. Bustefisch the conferment of an honorary rank in the SS.

"Among other things he explained that Dr. Bustefisch had approached him repeatedly for help to persons who

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for political reasons were in trouble. That he had gladly and successfully intervened in these cases; still, everybody knows that such interventions are difficult and in the future they would be easier for him to handle if Dr. Bustefisch would hold an honorary SS rank.

This invitation came entirely unexpectedly to Dr. Bustefisch. His entire attitude as it resulted from his education and career and the stand he had taken in the past. He had no interest for political organizations and remained a stranger to them. As a liberally minded person he shunned closer political ties. Consequently, the suggestion made by Kranefuss took him very much by surprise, and he was in no way ready to accept it. His first answer to Kranefuss was evasive, to gain time for refusal of a well considered type and manner.

When, after that, Kranefuss on repeated occasions referred to his proposition Dr. Bustefisch answered that for professional and also personal reasons he does not feel free to take upon him certain commitments which go with an SS position. He stated that he could not submit to the authority of command by SS and that he must preserve his freedom of conviction and action. Also he could not be under the obligation to serve the SS or to attend SS functions. By the same token he also was not able to wear SS uniform or in other respect to go about as an SS leader.

Compare testimony Bustefisch, transcript p. 8902, English page 8620.

Dr. Bustefisch' statement thus meant an unequivocal refusal of the invitation of Kranefuss since neither Bustefisch nor anybody else could expect that an SS position was reconcilable with a rejection of the above mentioned stipulations.

Contrary to all expectations, however, Kranefuss took up the various objections raised by Bustefisch and after several discussions he declared that one was willing to acknowledge his reservations. In other words, he offered to Bustefisch that he should accept an honorary SS rank but that he would not have to take the oath, that he would not have to submit to the SS authority of command, that he did not have perform any duties,

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that he did not have to wear uniform, and that he did not have to appear as an SS Leader. Dr. Buotefisch would merely be listed formally in the SS records as the holder of an honorary rank.

This unusual offer which Dr. Buotefisch could not possibly have expected placed him into a most unusual position. He faced the following alternative:

If Dr. Buotefisch even now were to persist in his uncompromising attitude it would mean a sudden destruction of the relationship with Kranofuss. In this respect it should be pointed out that Kranofuss was a highly sensitive personality whose feelings were unusually easily hurt as has been confirmed to us by numerous witnesses.

More important still was the fact that an end of the close collaboration with Kranofuss also meant the loss of his help as a colleague in the straightening out of Brabag personnel matters, and henceforth Buotefisch would no longer be able by way of Kranofuss to aid persons who were politically in difficulties.

"Only those who have experienced all these events can understand how difficult Dr. Buotefisch's position was at times. Dr. Buotefisch was capable of smoothing out difficulties only by his congenial manner of working with Kranofuss. Kranofuss who recognized and valued Buotefisch's high qualifications wanted to honor him, as far as I know, by using his influence with the SS to get him an SS rank. Although refusing to accept at first as was known, Buotefisch, in the beginning of 1939, most likely accepted, in order to maintain the team work which was to our mutual advantage, for Kranofuss was a highly sensitive person, and easily hurt. Judging by my own experiences I venture to say that Dr. Buotefisch has never used the honor bestowed upon him for his own advantage; he even did not play off or show this honor openly at any time. I have never seen him in uniform, and I am convinced that only

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very few people knew about his honorary rank in the SS. For example, even I myself do not know to this day whether Bustefisch held a high or low rank or function within the SS. He never talked to me about this, nor did he show it in any way; however, he frequently told me about his dissatisfaction with the system, which also found its expression in his instructions, and did not shrink from using harsh words of criticism in connection with individual Party members.

His attitude towards Kranefuss enabled Bustefisch to support us technical engineers actively. I know that in 1944 Kranefuss insisted that I should be relieved from my post as plant manager in Hochlen, because according to his political principles, I did not have the required qualifications. All Party offices were mobilized to collect incriminating material against me. In this particular case, Dr. Bustefisch did not relax his efforts to belabor Kranefuss, until the latter dropped his plan, and the plant management remained in the hands of a technical engineer and was not turned over to a political man.

I could quote further instances of such occurrences. In all such cases, Bustefisch shielded his colleagues and assistants, technical engineers and workers, and it is remarkable that he always managed to gain his point in his unperturbed, matter-of-fact manner which Kranefuss respected.

I am of opinion that Bustefisch's relations to Kranefuss as senior SS officer had nothing to do with their common attitude towards the SS tendencies, but were merely based on business and practical considerations."

Doc. No. 89, Exh. 76, book IV.

"It was first after the collapse in 1945 that I found out from another source that Dr. Bustefisch had, upon the instigation of Kranefuss, received an honorary rank in the SS. It is characteristic for Dr. Bustefisch that he never mentioned this fact nor in any way made use of it on the outside. I never saw Dr. Bustefisch wear a uniform nor a badge. I know that the National-Socialist philosophy left him absolutely indifferent, and I am convinced that Bustefisch only accepted the honor which Kranefuss bestowed upon him in order not to disturb the friendly relationship with the latter, and, on the other hand in order to retain sufficient influence with Kranefuss so as to be able to efficiently help his co-workers, who, for political reasons, found themselves in straits. This manner of acting entirely conformed to his character.

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Doc. Bus. 92, Exhibit 234, book X.

also comprise:

Doc. Bus. 294, Exh. 237, book X, page 24 (26)

" " 100, " 76, " IV

testimony Blossing, Doc. Bus. 204, Exh. 239, Book X,
page 34 (40 & 41).

As previously mentioned, this possibility was not merely a vague expectation but an entirely practical reality. The instances referred to show that Dr. Buetefish always was ready to intervene in behalf of politically persecuted persons and that these interventions had good success with Kruefuss.

On the other hand, as Kruefuss explicitly had accepted the reservations above mentioned the conferment of the SS rank ^{on} Dr. Buetefish actually amounted to a mere formality only. The pertinent obligations held by Dr. Buetefish against a rank - namely submission to the SS authority of command, discharge of duties, appearance in public as SS Leader, had thus been largely eliminated. What the matter now amounted to was that Dr. Buetefish would be included in a list of the SS internal records as the holder of an honorary rank but there would be no practical effects arising therefrom. The most important angle, however, was that in this way he preserved for himself the possibility through Kruefuss to continue to assist persons in distress for political reasons and that there would be no disturbance to the congenial cooperation in Drabag. After prolonged hesitation and pondering Dr. Buetefish in the face of this alternative decided, after consultation with

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persons close to him - such as the affiant Dr. Fischer - to accept the second alternative. Thereupon Dr. Dietefisch was advised in writing that he had been appointed an SS-Hauptsturmführer in an honorary capacity. His promotion to Obersturmbannführer at a later date was purely automatic.

Developments as above described are complete; their details are being supported by documents introduced.

The affiant Dr. Fischer states:

"Kranefuss was a peculiar character, I know him well through collaboration over many years and through personal contacts. He was a high SS-Führer and thoroughly versed in the precepts of the SS, for example in its esoteric concepts. Yet he was an idealist blessed with the best of wills to do good; but he lacked knowledge of the world and reality and was in need of human compassion. His connections with the Reichsführer-SS enabled him to intervene successfully in numerous cases against measures of the party or SS offices. He was amenable to reasonable arguments, and through him it was possible to prevent or compensate for many a stringent measure. (Uebergriffe). Dietefisch was able to use the confidence he enjoyed with Kranefuss, in numerous instances, in order to intervene on behalf of political persecutees or oppressed people. To illustrate, I recall inter alia cases Al von Weinberg, Dr. Demuth, and Dr. Schaumburg.

At the beginning of 1939, Dietefisch was offered an SS rank by Kranefuss. Dietefisch avoided this offer for a long time and, to the end, he sought reasons for not accepting the offer of rank. It was hardly possible for Dietefisch to state his express and determined refusal of the rank offered to him in the existing circumstances, since such a refusal would at least have meant the end of collaboration with Kranefuss. This would also have put an end to the worth-while chance of intervening in the ever increasing emergency cases on behalf of oppressed persons. Quite apart from all other apparent consequences which an open refusal would have had.

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Duotofisch therefore established a series of reasons which, in his opinion at that time, should have prevented the rank being conferred. He stated that he was not in a position to act officially as an SS-Fuehrer in particular he could not and did not wish to wear an SS-uniform. Moreover he could not bind himself to take part in demonstrations of the SS or of the Party. Above all, he stated that he could not bind himself to take part in demonstrations of the SS or of the Party. Above all, he stated that he could not subject himself to the authority of the SS for professional and personal reasons since he wished to retain the freedom of his convictions and behavior. Contrary to expectations Krenofuss accepted these reservations on the part of Duotofisch. Hence on the one hand it was no longer possible for Duotofisch to make any further refusal, and on the other hand, the material reasons for such a refusal were substantially removed since these reservations made the SS rank tantamount to a pure formality. All this was thoroughly discussed by Duotofisch and Krenofuss, sometimes in my presence, since Krenofuss at the beginning of 1939 continuously reverted to his intention of making Duotofisch accept an SS rank. As I recall, a rank was then conferred upon Duotofisch about the middle of 1939. As far as I recall this rank was that of an SS-Sturmabfuhrer.

In the following period, Duotofisch strictly adhered to the reservations made at the conferment of the SS rank and I have never seen him wearing the SS-uniform or even insignia. As far as I know, he did not even own an SS-uniform. As Duotofisch told me at the time, he never was sworn into the SS and I suspected that Krenofuss expressly permitted this circumstance to exist in view of the special conditions of the conferment of the SS rank. To my knowledge, Duotofisch never appeared as an SS-Fuehrer either."

Doc. No. 201, Exhibit 333, book I
also compare testimony of Dr. Oster, German transcript
page 10910, English page 10763.

One might criticize Dr. Buetevisch for having failed to inform himself thoroughly on the purpose and objectives of the SS and to make enquiries about Kranofuss. The answer to this is that Dr. Buetevisch had no other contacts with the SS and that he had full confidence in the decent character of Kranofuss and placed credence in his statements. From the very outset it was not the intent of Dr. Buetevisch to engage in any sort of activity as an SS member, to support the interests of SS, or to promote its objectives. He took the entire matter as a friendly gesture on the part of Kranofuss, and he did not consider himself a genuine SS member. Consequently, it also did not enter his mind that to accept this honor was dishonest or even a crime. He accepted the honor in order to please Kranofuss of whose decency he was convinced. This is borne out also by the testimony given by the affiant Kranofuss a very close acquaintance of Kranofuss who was not a Party member or an SS member:

Affiant Chaudon:

"I am convinced that even here Kranofuss remained an idealist to the last for I am sure that Himmler managed to show to Kranofuss only the good end of the two sides of his character; altogether I knew Kranofuss only as an honest, chivalrous and brave man when, judging by his whole character, I would never expect to act inferally. Kranofuss was not a politician. He was interested in economy; politics only concerned him in as far as he came in contact with it in his professional and in daily life. On the other hand his ethical judgement about political personalities was very definite. In the course of the years Kranofuss voiced growing exasperation with regard to the lust for power and greed as well as the corruptibility and corruption of well-known personalities of the Party and authorities..... Kranofuss at the time was very much opposed to the persecution of Jews of November 1938. He not only considered these measures as a stupidity from the economic point of view and a political short-sightedness but also as entirely unjustifiable from the ethical point of view. From his former position as private secretary to a Jewish trainee - ..

private banker in Hannover he knew many Jewish business-people.

.....I was therefore not surprised when Kranefuss informed me one day that Duotofisch had been given an honorary rank in the SS. There is not the slightest doubt for me that Kranefuss was the author of this for he was very proud that he had been able to bestow this honor upon Duotofisch.

In this connection I must say that during all the many years I worked together with Duotofisch he not once boasted of or hinted at his SS-membership by word, deed or by his attitude. I never saw him in uniform for instance, nevertheless, through this new relationship to Kranefuss Duotofisch was often able to openly criticize some business and personal matters. I must confess that this was very much to the advantage of us other colleagues who had some difficulties with Kranefuss and his changing moods. For this friendly and disinterested help on the part of Dr. Duotofisch to colleagues - without exception and with a great deal of admiration - have been grateful to the last. The personal relationship between Duotofisch and Kranefuss - to my knowledge - was limited to their contact in business. As far as I know, I would have certainly heard about it if it had been otherwise - they did not meet socially."

Doc. Bue. 292, Exhibit 243, Book X.

See also

Doc. Bue. 201, Exhibit 233, Book X.

Duotofisch never considered himself a genuine member of the SS, but an Honorary Leader who neither enjoyed rights nor was under any obligations.- It is a fact, too, that special regulations applied to Honorary Leaders. The former Chief of the SS Main Office, Berger, has testified:

"Admission of honorary leaders into the SS was effected either through personal application or upon invitation by Himmler

or the leader of an administrative district. In the first case a petition was submitted to Himmler or the administrative district concerned; in the latter case the applicant received a questionnaire with the request that it be completed and returned together with the documents detailed below, for "the Reichsfuehrer SS intends to admit you into the SS". This invitation was extended to such men in public life who had gained recognition by virtue of their personal ability irrespective of their party membership. The following papers were to be submitted with and in addition to the questionnaire..... In the SS they were carried on the strength of the Staff of one of the Main Offices or the Staffs of the Administrative Districts and Sub-districts. They were entitled to wear uniform on special occasions of a personal or official nature. Up to the outbreak of war they received the generally issued regulations (uniform regulations, conduct in public when in uniform, etc.) but they did not participate in the duties of the general SS (marching off, sport evenings, roll-calls) as they were attached to the staffs and not to any unit.

Promotions in their civilian occupation also meant their promotion in the SS but in such a way that their service rank was always adjusted to one grade below that which corresponded to their civilian status. These promotions had no connection with any services rendered in the General SS.

Up to 1940 the majority of the honorary leaders were attached to the SS-Main Office. They may have numbered 6000. On the re-organization of the main offices on 1 January 1940 the honorary leaders were allocated by Schnitz, chief of the newly formed SS-Personnel Main Office, after conferring with Himmler and Heydrich. About 1500, the less important ones, remained with the main office. Of these 900 were allocated by myself to the Staffs of the Administrative Districts. The remainder comprised mainly those honorary leaders who were engaged in Berlin itself with Reich Ministries and Departments or Reich Offices of Trade and Industry, but who were not important enough to be of interest to Administrative District Spree. Dr. Heinrich Duefisch was also one of these..... Dr. Duefisch has not filled any office under me nor has he ever been requested by me to perform any duties. There was also nothing known of his serving with any unit of the General SS.

prior to 1940. Honorary leaders, and, therefore, Dr. Buete-fisch too, had no authority to give orders in the General SS.

Doc. Bue 206, Exh. 231, Book X.
also compare

Testimony of Dr. Buete-fisch, German transcr.
p. 8902 et seq., Engl. p. 8920.

The documents of the Prosecution

NI-6710 A.	Exhibit	1575	
NI-6710 B.	"	1576	
NI- 6710 C.	"	1577	
NI-6710 D.	"	1578	
NI-6710 E.	"	1579	
NI-6710 G.	"		(cross-examination)
NI-10624	"	1580	
NI-9366	"	285	

and its assertion on page 3 of the Trial Brief, Part IV, according to which Dr. Buete-fisch "discharged functions" on behalf of SS are related.

The fact that Dr. Buete-fisch actually was nothing but an Honorary Leader being supported by the affidavit of Obergruppenfuhrer (Lt. General SS) Wolff:

In the same year (1939) Kranefuss suggested that Dr. Buete-fisch be granted an SS rank (Obersturmfuhrer) on the grounds that he was a leading technician in industry and was held in great esteem there as an upright, frank, and honest man. Buete-fisch's further promotions up to the rank of Obersturmbannfuhrer followed automatically.

It involved granting a purely formal rank of honorary Fuhrer (Ehrenfuhrer). To my knowledge, Dr. Buete-fisch did not serve in the SS, and did not belong to any detachment (Verband). I cannot recall ever having seen him in an SS uniform. As already mentioned, Dr. Buete-fisch never handled business matters of his firm with me or, as far as

I know with other SS offices, with the exception of the described discussion in 1941. It cannot, therefore, be maintained in any way that Dr. Baetefisch acted as a liaison between Farben and the SS. Nor was he ever considered as such by the SS.

Doc. Bue 169, Exhibit 142, Book I
also compare

Doc. Bue	89,	"	76,	"	X, Page 50
"	" 292,	"	243,	"	" " 60

Prosecution document

NI 10624, Exhibit 1580, Book 91

shows that although Dr. Baetefisch had been appointed an Honorary Leader he nevertheless was kept constantly under surveillance. This document, a memorandum of the Reich Main Security Office (Reichs Sicherheitshauptamt) of 11 January 1943; reads:

"Dr. Baetefisch then is committed to Farben to the greatest possible extent and by all means is to be considered as forming part of the Konzern Irrespective of all favorable aspects which may be brought up in favor of the personality of Baetefisch it should be borne in mind always that such a man, by reason of the entire net work of international economic agreements in connection with which he himself has made an appreciable contribution towards bringing them about, is from the outset possessed of a mentality which is bent on international cooperation and on international interchange of experiences for which it is a foregone conclusion that a Konzern is a state within the State which has laws of life and rights of life of its own which it has to defend and for which it is being paid."

This opinion shows plainly that - while Dr. Baetefisch did not feel that he was an SS member - the SS, in its turn, did not consider him as one of their own kind either. The Prosecution was not in a position to establish proof

Bue IV

to the fact that Buotefisch discharged functions of any kind with the SS or that he defended its interests.

The fundamental reservations on which Dr. Buotefisch had asked to be assured prior to the conferment of the rank were also fully preserved thereafter for all practical purposes. At no time did Dr. Buotefisch

take orders of any kind from the SS. He never discharged any functions for the SS.

Doc. Bue	206 =	Exh. 231,	Book 10,	p. 2 (4)
" "	169 =	" 142,	" 10,	" 95
" "	141 =	" 230,	" 10,	" 1
" "	137 =	" 210,	" 9,	" 37

He never wore a uniform and did not own a uniform at all.

Doc. Bue	141, =	Exh. 230,	Book 10,	p. 1b
" "	137, =	" 210,	" 9,	37
" "	201, =	" 233,	" 10,	8 (10)
" "	250, =	" 224,	" 9,	79 (80)
" "	142, =	" 218,	" 9,	53 (54)
" "	252, =	" 199,	" 9,	10 (11)
" "	317, =	" 264,	Suppl. I,	p. 317

Also when seen in public his apparel was not at any time that of a holder of an SS rank.

He also was never sworn in with the SS.

Doc. Bue	201 =	Exh. 233,	Bk. 10,	p. 8 (10)
" "	250 =	" 224,	" 9,	" 79 (80)
" "	252 =	" 199,	" 9,	" 10 (11)
" "	319 =	" 266,	in Suppl. I,	p. 63

The administering of an oath according to the ceremonies prescribed by the SS would have been practically impossible without the possession of a uniform. His SS position actually merely meant that in an inter-office record he was listed as a holder of such rank. This is most effectively revealed in the fact that his honorary rank was generally unknown, even in the circle of his closest acquaintances and friends. In addition to the documents already listed compare also

the following documents:

Doc. Bue	88 =	Exh. 177	Book IV
Doc. Bue	198 =	" 198	" 9 page 8 (9)
" "	245 =	" 200	" 9 " 13
" "	186 =	" 202	" 9 " 17-18
" "	246 =	" 207	" 9 " 31 (32)
" "	147 =	" 209	" 9 " 35 (36)
" "	143 =	" 211	" 9 " 39
" "	219 =	" 214	" 9 " 46
" "	251 =	" 204	" 9 " 21
" "	154 =	" 215	" 9 " 48
" "	145 =	" 217	" 9 " 52
" "	302 =	" 220	" 9 " 65 (69)

Loc.Bue.	279,	Exhibit	221,	Book	9	page	70
"	"	"	"	"	9	"	73
"	"	"	"	"	10	"	66 (64)
"	"	"	"	"	10	"	28 (31)
"	"	"	"	"	10,	"	48
"	"	"	"	"	10	"	21-22

When at a later stage Kranefuss at one time made an attempt to infringe upon the privileges granted to Dr. Bueteftsch, the latter held on to these privileges with the utmost tenacity. The point was that in 1941 Kranefuss suggested to Bueteftsch that he should purchase a uniform for special occasions. Thereupon Dr. Bueteftsch pointed with determination to the reservations specifically granted to him at the time of conferment of the rank, and he strictly refused to deviate from them by purchasing a uniform. As a result there were serious controversies between Dr. Bueteftsch and Kranefuss in the course of which Dr. Bueteftsch asked Kranefuss to delete him from the list of SS rank holders. Although Kranefuss pointed out the consequences of such a momentous step Dr. Bueteftsch stood by his demand and repeated it several times in the course of the ensuing months. When Dr. Bueteftsch again reminded him of it in the summer of 1944, Kranefuss declared that in view of the extremely precarious conditions prevailing as a result of the plot of 20 July, he could not possibly pass on that request. That is where matters rested. The result in any case was that the basic privileges granted to Dr. Bueteftsch continued to be recognized and no further attempt was made to shake his exceptional position.

In this respect compare Loc.Bue. 201 - Exh.233, Book 10, p.8 (10-11)

The positive goal which Dr. Bueteftsch above all had in mind with the acceptance of the SS-rank was also fully realized. Especially also in the course of the difficult years after 1939

Dr. Buetevisch in numerous instances intervened with Kranfuss on behalf of political persecutees; in almost all cases the intervention was successful, in that the persons in question were granted effective protection. As an example reference is made to the case of Dr. v. Weinberg, Dr. Schausburg, v. Selbert, Dr. Ziervogel, Dr. Sommer and, again, the case of Lonath.

There was no doubt in the minds of the management of the IG, that everything would have to be done to help Privy Councillor von Weinberg, and that on the other hand all efforts could only have at least a minimum chance of success if they were undertaken directly at the Reich Security Main Office. Even though one very well knew that efforts of this sort in the interest of Jews might entail dangerous consequences both for the firm and especially for those directly concerned themselves with the affair, since clear-cut warnings against any intervention in favor of Jews had been given in a number of official announcements, you nevertheless undertook to procure an interview with the Gestapo in the Prinz-Albrechtstrasse in order that we might attempt to obtain a repeal of the measures taken by explaining the merits of Privy Councillor von Weinberg. . . .

Doc. 266, Exh. 235, Vol. X

Dr. Buetevisch, because of his negative attitude towards National Socialist methods, could be approached at any time for help for persons in distress because of political reasons. This is shown by the following examples:
At the end of 1941 the Reich Fuehrer SS decreed that all those persons were to be removed from leading positions in the industry of the Protectorate who were married to Jewish wives and up to date had not been divorced.
On an inspection trip through the refineries of Pardubitz and Kolin, I found out that the chief engineers of both works, Oberingenieur Gump in Pardubitz and Oberingenieur Dr. Sommer in Kolin would be subject to this matter. When I approached Dr. Buetevisch in this matter, he immediately took steps to obtain the permission for both gentlemen to remain in their position, a thing in which he actually succeeded. This gives a good picture of Dr. Buetevisch's attitude towards the tendencies prevailing at that time.

	Doc. Bue. 253, Exh. 222, Vol. IX
cf. also	" " 296, " 226, " 5, p. 84 (85)
	" " 89, " 76, " 10, p. 49 (51)
	" " 92, " 234, " 10, p. 13
	" " 250, " 224, " 5, p. 79 (81)
	" " 246, " 207, " 9, p. 31

The documentary material already referred to by the Defense sufficiently proves that because of the conferment of the honorary rank Dr. Huefisch did not in any way change his attitude towards national Socialist ideology or that he would have made his own the "SS spirit", as people have come to know and despise it now; at this time, therefore, I shall merely draw attention to other confirmation of my representations.

Doc. Exh.	88,	Exh.	77,	Vol.	IV
"	230,	"	224,	"	IX
"	142,	"	216,	"	IX
"	137,	"	210,	"	IX
"	219,	"	214,	"	IX
"	154,	"	215,	"	IX
"	143,	"	217,	"	IX
"	142,	"	218,	"	IX
"	254,	"	196,	"	IX
"	196,	"	198,	"	IX
"	252,	"	199,	"	IX

Although official Party offices under threat of severest punishment had forbidden that Gau leaders and other functionaries do anything to help racial and political persecutes, Dr. Huefisch nevertheless never ceased to continue along his path despite the danger which this involved and as far as it could be reconciled with considered reasoning.

Affiant Dr. Seamburg:

"In 1944 I was arrested by the Gestapo for political reasons and spent many weeks in prison. After I had been acquitted by the Special Court for lack of proof, I was informed that Dr. Huefisch had immediately started to intervene for me. . . . After my release, the Gestapo announced that I should be arrested again. In my despair I turned a.o. again to Dr. Huefisch who willingly promised his assistance, so that the Gestapo should finally leave me alone. A few days later I was taken to hospital for several months with a serious illness which I contracted as a consequence of my stay in prison. During this time, I was informed that Dr. Huefisch intervened for me with the Reich Security Main Office in order to save me from renewed arrest by the Gestapo."

Doc. Exh. 330, Exh. 265, Supplement Doc. Book I

This, to bring help to political persecutes, was the sole

purpose for Dr. Duotefisch's making use of his contact with Kranefuss and with it of his honorary rank. He never made use of those connections for purposes of any other kind, either of a personal or business nature. This is confirmed explicitly by the documentary material submitted, for example by

Doc. Bue. 201 = Exh. 233, Book 10, page 8 (11-12) according to which Kranefuss stressed this fact repeatedly as the reason for his special respect and appreciation for Dr. Duotefisch.

Compare also Doc. Bue. 169 - Exh. 142, Book 10, page 95 (97)

where it is also confirmed that his SS rank never caused Dr. Duotefisch to confer with SS offices on business matters. As a matter of fact, the Prosecution was unable to establish proof for a single instance of that type.

It is correct that originally it made an attempt to connect the conference of Dr. Duotefisch and other Farben representatives on the one hand, and SS Leader Wolff, on the other hand, with the SS rank of Dr. Duotefisch. The documentary material, in particular

Doc. Bue. 169, = Exh. 142, Book I, page 95 and the
106, " 8, " I " 16 - 17

previously mentioned show unequivocally, however, that this conference had nothing whatsoever to do with the SS rank of Dr. Duotefisch. In this respect I also refer to the extensive arguments under Count III of the Indictment. Apart from this incidental occasion Dr. Duotefisch never had reason to contact an SS agency on business matters. Also outside of the SS sphere Dr. Duotefisch never made any mention of his rank nor

did he make use of it in any other manner. This was precluded also by the very fact that his rank was generally not known.

As was already pointed out at the beginning, the above statements of fact, in the light of the documentary material which has been introduced, are correct beyond any doubt, and the Prosecution has not assailed them. If despite this I have attached particular importance to summarizing these matters and to establishing proof for each point this is done primarily for two reasons:

- a) The issue is unusual. This, therefore, increases the need for full clarity and assurance on it. It is true that to a person who has lived in the Third Reich this situation will not appear unusual but rather typical: namely typical for conditions of that period and for the means of escape from those conditions which the individual frequently had to take.
- b) From the exact knowledge of the actual facts follow at once the legal considerations governing the decision on this count of the Indictment.

Legal assessment.

From the legal assessment of the foregoing issue it follows that a conviction of the Defendant Dr. Baetefisch for principle SS membership is out of the question for several reasons.

The SS rank which Dr. Baetefisch held was an honorary rank. In other words, he was merely a so-called Honorary Leader of the SS. The generally prevailing opinion is that the so-called

Honorary Leaders are not, as a matter of principle, to be considered as official SS members within the meaning of the IMT Judgement. This attitude is taken in particular by the American Military Government in Germany as shown in document

Bue. 203 = Exh. 232, Book 10, Page 6.

The Ministries for Political Liberation take the same viewpoint. Compare

Doc. Bue. 307 = Exh. 229, Book 10, Page 1.

Thus in the American Zone of Occupation the generally prevailing opinion and practice is that the declaration of criminality as applicable to the SS does not apply to the so-called Honorary Leaders.

For the sake of completeness I mention that, in the British Zone, the question is disputed. The conviction of members of organizations which were declared to be criminal is in the hands of special Denazification Courts of 23 September 1947 (published in the magazine "Die Spruchgerichte", 1947, page 80) and also to the verdict of the Supreme Denazification Court of 23 January 1948 (previously referred to, page 79) where it is said:

"The governing factor is..... exclusively how the defendant came to join the SS, i.e. whether he asked for admission into that organization and whether that request was accepted The facts speak for it that the defendant made application for acceptance into the SS. If that is the case, however, the defendant then.... became a member of the SS and thus falls into the category of persons to whom the Nuremberg judgment applies. In that case also, the defendant can no longer be spoken of as a so-called Honorary Leader because membership in the SS was not offered to him."

True, there also are verdicts of the Oberste Spruchgerichtshof (highest denazification court) according to which honorary leaders (Ehrenführer) of the SS were sentenced, as witness is the verdict of the Oberste Spruchgerichtshof against Baron von Schroeder, which the Prosecution submitted in its rebuttal in Document Book 92. However, these verdicts, too, in no way regard the honorary leaders simply and purely as official members of the SS within the meaning of the IMT-Judgment, but they consider the honorary rank as a punishable membership in the SS only under certain conditions. These conditions are not given in the Case of the Defendant Dr. Gustafisch, as I shall show in detail in the following. Hence, in the British Zone, too, the declaration of the SS as a criminal organization would not affect Dr. Gustafisch, according to the judicial opinions of the Oberste Spruchgerichtshof.

Mention should also be made that most SS-Führers oftentimes persons of a much higher rank than the Defendant Gustafisch - have long ago been released.

The basic reason why the prevailing opinion does not regard the so-called Ehrenführer (honorary leaders) at least not per se, as official members of the SS within the meaning of the IMT Judgment, is the following:

The members of the SS and of the other organizations declared criminal are to be punished because they furthered their organizations and thereby the criminal aims of these organizations. The punishable element lies in the furtherance of the organizations or their aims. Membership in the organization is consequently punishable only when it was connected with such furtherance. A purely formal membership without any furthering of the organization or its criminal aims is not punishable. The IMT Judgment

expresses this clearly when it says (official German text, on page 288):

"A criminal organization is analogous to a criminal conspiracy in that the essence of both is cooperation for criminal purposes. . . . Membership alone is not enough to come within the scope of these declarations."

(Translator's note: Underscores are not found in the originals from which quotations are taken).

In the same connection the Judgment explicitly states (page 287 of the above-mentioned Judgment):

"... that criminal guilt is personal, and that mass punishments should be avoided".

therefore
The Judgment explicitly requires (page 287 of the above-mentioned Judgment):

"that innocent persons will not be punished".

Likewise, the American Chief Counsel Jackson pointed out in the IMT Trial (page 406, Volume 8 of the Proceedings, German trans.):

"The purpose of declaring criminality of organizations, as in every conspiracy charge, is punishment for aiding crimes . . ."

He expressly admits (page 404, Volume 8 of the Proceedings):

"There may be instances in which membership did not aid, and abet organizational ends and means, but individual situations of that kind are for appraisal in the later hearings. . . ."

The Prosecution in the IMT Trial also unquestionably premises that the member positively furthered the criminal aims of the organization.

The same point of view is expressed in the Judgment of Military Tribunal in Case No. V against Flick et al. This Judgment likewise is based on the principle that a member positively "supported" the organization and hence that he "must be regarded as an abettor".

I refer further to the Judgment of Military Tribunal II in the Case IV, against Pohl and others, which, for the sentencing of SSmembers, is based on the premise that they had "shared by assent" in the criminal acts of the SS, and which acquitted 4 defendants with comparatively high

SS ranks, because no proof has been established that they had thus participated in criminal acts.

Furthermore, this same viewpoint prevails in the literature. I quote the following authors in this regard:

Professor Bauer in the publication "Die Spruchgerichte" 1947, page 6 et seq.(7):

"However, in order that the mere membership be punishable, there must also be a furthering of the criminal purposes, a direct relationship to the criminal, anti-human tendencies of the organization The membership must be accompanied by behaviour of a kind tending to promote the criminal aims of the organization."

Professor Mayer, page 17 et seq.(18) of the above publication, 1947:

"Hence, the substantive wrong doing lies in the furtherance of the Crimes against Humanity."

Ruff, page 66 et seq. (68) of the above publication, 1947:

"However, the basic principle that must prevail in individual proceedings must be the one that only such a member shall be sentenced who directly or indirectly furthered the crimes of the organization, whose activity in the organization stood in a direct causal relationship to these crimes."

Compare also Mayer-Abich, page 2 et seq.(3) of the above publication, 1947, and Werner, page 59 et seq.(60) of the above publication 1947.

The Oberste Spruchgerichtshof for the British Zone likewise consistently endorsed this principle.

In summary it may be stated, then, that all the judgments passed in this field, as well as the position taken therein by the authoritative writers, agree that the punishment of a member of an organization declared to be criminal, presumes a positive and furtherance of the organization its criminal aims. In specific cases differences of opinion may naturally arise as to how extensive a participation is necessary for conviction. In the case of the so-called

honorary leaders of the SS a positive furthering of the SS, or even of its criminal aims, may not be ascertained in general. The membership of the honorary leaders was basically merely a passive one, since they performed no services for the SS. Furthermore, they had ^{not} utterly intention, in general, of furthering the SS or its criminal aims. On the contrary honorary rank was offered to them or forced upon them without their being consulted. That is the reason that the honorary leaders of the SS are on principle not subject to the declaration of criminality of the IMT Judgment, according to the prevailing opinion.

As already mentioned, isolated verdicts are on hand by the Oberste Gerichtshof for the British Zone which take a dissenting point of view. These verdicts consider it possible also to convict honorary leaders as punishable members of the SS. However, they presume thereby that the honorary leaders in some way furthered the criminal organization. The judgments see the furtherance in the fact that the honorary leaders, who were well-known and respected persons, appeared in public as SS leaders on representative occasion and thereby enhanced the reputation and the prestige of the SS. Even the verdicts of the Oberste Gerichtshof are premised at the least on such a furthering of the SS and its activities.

The same point of view is taken by the Prosecution in its rebuttal, Book 92, (submitted for identification) in the Judgment of the Oberste Gerichtshof against Baron von Schroeder.

It is true, the interpretation in these individual decisions might be erroneous. In my opinion this is shown by the fact

that the IMT-Judgment did not include the so-called Reiter-SS (mounted SS) among the organizations declared as criminal. There can be no doubt that the members of the Reiter-SS, especially those with high SS ranks and those who were outstanding horsemen, contributed in a large measure to furthering the prestige of the SS among the public, and in a much larger measure than in the case of an average Sturmführer. This proves clearly that the IMT did not consider such a furtherance to be sufficient. The statements by the Spruch-Oberste/Gerichtshof in the judgment against Baron von Schroeder, which was submitted by the Prosecution, cannot alter anything in this respect.

For the Defendant Dr. Buete-fisch, however, there is no danger involved in using the severest and strictest criteria in the question of what degree furtherance of the SS should be required for punishment. According to the proved facts, as shown in the introductory statements, there was absolutely no active furtherance of the SS or of its criminal aims. The Prosecution has been unable to demonstrate a single instance of such furtherance. The fact that Dr. Buete-fisch did not make himself guilty in connection with the Auschwitz works of any furthering of the SS or its criminal aims, has already been demonstrated in detail in the statements in answer to Count III. In a later section I shall prove in detail that the donations by Farben to the SS did not come under the responsibility of Dr. Buete-fisch, and consequently, they cannot be constructed as a furtherance of the SS by him. However, Dr. Buete-fisch not only abstained from any active furthering of the SS, but in his case

there was not even the minimum of furtherance which is presumed for the conviction of an Shrenfuhrer even in the particularly severe verdicts of the Oberste Spruchgerichtshof in Lemm. As the facts show, Dr. Bueteffisch never wore an SS-uniform, and he never appeared as an SS-leader in any other way. He did not contribute in the slightest degree to enhancing the reputation of the SS among the public or to "giving it glory and prestige". The fact that his honorary rank was nothing more than a matter of registration in the internal lists of the SS and in general remained unknown to the public, completely precludes anything of the kind.

Thus, the defendant Dr. Bueteffisch knowingly and consistently refrained from any furtherance, which he could not give as Shrenfuhrer, even the slightest degree of the SS, or any of its aims. Above and beyond that, wherever possible he successfully opposed any criminal activities of the SS. While he refrained on principle from ever performing any services for the SS and even from ever appearing in public as a holder of an SS rank, he time and again successfully made use of his connections with the SS in order to help politically persecuted persons. The fact in this regard have been fully stated- in the description of the facts. Hence, the circumstances that Dr. Bueteffisch held an SS rank signifies not only that he did not further the SS, but it represents a consistent and unfailing opposition to any criminal acts. For the judicial appraisal of this statement of the facts I make reference to the verdict of 11 Nov. 1947 of the Oberste Spruchgerichtshof (promulgated in the publication

"Die Spruchgerichte" 1948, page 9), among others, where it is said:

"The Chamber (Senat) has already stated that the punishable element of a crime for belonging to a criminal organization consists in the conscious and intentional and voluntary participation in the criminal organization and in increasing its potential for the future However, in certain cases such a furtherance may not exist, in spite of the fact of membership: such is the case when, as in the case at hand, the member did not join the organization and remain in it in order to serve and further it through his participation, but precisely for the opposite reason, to oppose its aims and purposes and to handicap it as much as possible".

This point of view is also repeatedly set forth in the literature. Thus, Werner, in the publication, "Die Spruchgerichte", 1947, pages 60-61, and Prof. Mayer, page 19 of the same publication for 1947.

For the conviction for punishable membership in the SS, however, it is not only necessary that the SS member objectively furthered the SS and its criminal aims, but also that he had subjectively had the intention of such furtherance. The SS member must have known that the SS or its aims were being furthered by his membership or by some activity on his part. On this point there is unanimous agreement by all courts concerned therewith, as well as by all the writers among the legal experts.

As already stated, the defendant Dr. Buotofisch did not ^{further} in any respect, even objectively, the SS or its aims, but only opposed them as best he could. How should he have reached the conclusion that he made himself guilty of furthering ^{he SS?} As the proven facts show, he was not concerned with furthering the SS and its aims, but, on the contrary, with hindering or undoing, by means of his connections with the SS, measures against politically persecuted persons. Hence, it is

impossible that he entertained the thought of furthering the SS in any way; on the contrary, he had precisely the opposite aim, namely, to counteract any possible criminal acts.

In Summary it may be said:

According to the prevailing point of view and the one which has had virtually exclusive acceptance in the American Zone, Dr. Buefisch is, to begin with, not subject to the declaration of criminality of the IMT Judgment, for the reason that he had nothing more than a formal and honorary rank in the SS. But even according to the most unfavorable and the strictest point of view, as expressed in isolated verdicts of the Oberste Spruchgerichtshof for the British Zone, no conviction is justified in his case. For these verdicts, too, require at the least that the honorary leader furthered the SS or its aims through his public appearance as an SS leader; but Dr. Buefisch advisedly and consistently desisted from taking part in even such a minor method of furtherance.

Furthermore, in other ways, Dr. Buefisch not only refrained from all furthering of the SS or its aims, but he positively countered them inasmuch as he used his connections with the SS exclusively for the purpose of successfully helping persons who were politically persecuted.

Consequently, it is untenable that he entertained any thought of furthering the SS or its aims in any way; he had only the opposite intention.

In the preceding statements I have quoted as fully as possible the decisions of the courts and other authorities competent in such matters in the Western Zones of Occupation,

and also the opinion of authoritative writers on this subject. Thereby I have been guided chiefly by the objective of presenting material to the Tribunal which is available from court judgments and the writings of legal experts. Even though the Tribunal may not be bound by such precedents, nevertheless, they may serve as a source of legal material. Beyond that, however, there is a special reason for taking these previous opinions into consideration:

"The IMT pointed with great emphasis to the fact (referring to the declarations of criminality of entire organizations) that "this is a far-reaching, novel procedure", and that "its application unless properly safeguarded, may produce great injustices." For this reason the Tribunal^{ally} expressly recommended, for the subsequent trials of individual members of organizations declared to be criminal,

"that as far as possible throughout the four zones of occupation in Germany the classification, sanctions, penalties, be standardized. Uniformity of treatment, as far as practicable, should be a basic principle."

Thus, the IMT Judgment explicitly established the principle that the members of organizations declared to be criminal should be given uniformity of treatment. The court verdicts and expert opinions quoted above make it clear how the case of the Defendant Dr. Buetafisch would be adjudicated in general in the Western Zones of Occupation by the authorities cited, namely, that the defendant would not be sentenced even under the most unfavorable and severe interpretation. Hence, I am certain that the material here reproduced will be given special consideration by the High Court from this point of view.

As the proven facts show, the defendant, Dr. Baotofisch's position with the SS was from the outset a special and unusual one. Pursuant to repeated and thorough discussions, which he had with Kranofuss prior to the conferment of the honorary rank, fundamental reservations were granted to him, namely

- a) He was not subject to the orders of the SS; in other words, he had no duty of obedience.
- b) He did not have to serve ⁱⁿ any way or take part in celebrations.
- c) He did not have to wear a uniform, and in fact he did not possess a uniform. Furthermore, in other ways he did not have to appear as an SS leader.
- d) He did not - as a result of all this - take an oath.

These reservations were not of mere theoretical significance, but they were fully adhered to and respected in practice till the very end. In my opinion they preclude construing the honorary rank of Dr. Baotofisch in the SS in any way as a genuine official membership within the meaning of the IMT Judgment.

As is well known, the matters, to which the mentioned reservations refer, were the basic principles of the SS. Unconditional authority of command on the part of the leaders, blind obedience, readiness to perform any service demanded, and the taking of an oath were repeatedly proclaimed as the essential elements of the SS. They were also the essential elements for the very existence of the SS.

Compare Doc. US 323 in the IMT Trial.

Furthermore, in its presentation of the case against the SS, the prosecution in the IMT Trial repeatedly referred to these principles as the essential elements of the SS.

Thus, on page 182, Volume 4 of the Proceedings (German transcript):

"For the SS was the elite group of the party, composed of the most jingoistic adherents of the Nazi cause, pledged to blind devotion to Nazi principles, and prepared to carry them out without any question and at any cost...."

Likewise, page 205, Volume 4 of the Proceedings, where again "blind obedience" is mentioned as the basic principle of the SS. Further, page 403 of Volume 8 of the Proceedings, where the Prosecutor Jackson emphasizes that one of the criteria in determining whether an organization should be declared criminal is "submission to discipline and chain of command". With like emphasis the Prosecution in the NIT Trial rightly pointed out the significance of an oath with the SS. Thus, page 206, Volume 4 of the Proceedings, where the complete text of the oath is reproduced. Again, page 220 of Volume 4 of the Proceedings, according to which the taking of the oath represents the basic prerequisite for membership in the SS:

"By SS members, we mean persons who took the oath and appeared on the membership list..."

Similarly, page 494, Volume 8 of the Proceedings, where the taking of the oath is again mentioned as the premise for membership in the SS. In its final statement the Trial Counsel again laid particular stress on the salient significance of the oath, as witness the statement of Trial Counsel Dodd (page 102 of the German version of the Proceedings), Afternoon Session of 29 August 1948, and the statement of Prosecutor Rudenko (page 42 of the Proceedings), Afternoon Session of 30 August 1948, who again quoted the full text of the oath.

All this shows that the reservations which Dr. Buotofisch managed to secure before the rank was bestowed on him, and which were respected

until the last, were terms that were simply incompatible with the essential character of membership in the SS. These reservations represented the precise opposite of that which, according to the official announcements of the SS, according to its entire bearing in practice, and also according the results of the evidence in the IMT Trial, characterized the SS and membership therein. Hence, the rank of Dr. Buotofisch, which meant nothing more than being entered in the lists and which was explicitly subject to these stipulations, was devoid of all characteristics of a genuine membership in the SS. On the contrary, it stands in open and irreconcilable contradiction thereto in its salient points. An SS membership under these reservations would truly be a contradiction in adjecto. Consequently, the purely formal and honorary rank of Dr. Buotofisch, which from first to last was subject to the reservations aforesaid, cannot represent a genuine official SS membership within the meaning of the IMT Judgment. This conclusion is the inevitable result of an appraisal that is realistic and concerned with the essence of the matter.

In any case, even a formal way of looking at it precludes the supposition of an official membership within the meaning of the IMT Judgment. This is the proven fact that Dr. Buotofisch did not take the oath with the SS. The Prosecution in the IMT Trial, gave, at the request of the Tribunal, a definition of the meaning of membership in the SS which was to be used in connection with the declaration of criminality requested by the Trial Counsel. The Prosecution states, on page 220 of Volume 4 of the German version of the Proceedings:

"By SS members, we mean persons who took the oath and appeared on the membership list."

This definition is decisive for the establishment of the circle of members of the SS. The judgment of the IMT did not repeat the definition in detail but confined itself to the statement that it includes in the SS all those persons, "who officially had been accepted as members in the SS". (Official wording in German language page 207). But for the question as to which persons were officially accepted as members in the SS the definition given in the course of the IMT trial remains valid.

Apart from the fact that the definition given by the prosecution in the IMT proceedings is factually absolutely correct and was not denied by either side, this definition must also be considered being authentic for legal reasons. If the IMT, at the request of the prosecution, declared an organization to be criminal then thereby they certainly did not go further than the circles of persons whom the prosecution themselves have expressly limited as quoted above. According to the rules and the procedure of the IMT trial it cannot be assumed that the Tribunal desired to declare as criminal more persons than the prosecution themselves had demanded. There is general agreement on the point that the judgment of the IMT "in no point exceeded the organization indictment, but in numerous points lagged behind it" (Ruff in the periodical "Die Spruchgerichte" 1947, page 67).

The definition given in the IMT trial which accordingly is decisive prescribes then, for membership in the SS, that the member must have taken the oath to the SS and been listed in the membership roll. In the case of Dr. Buetefisch however the first condition, namely taking of

the SS oath does not apply. Therefore, for lack of being sworn in, he does not fall within the circle of SS members in the sense of the official definition.

Even though this may not be decisive, it might indeed, be mentioned that this was not a matter of mere formality but has its good reason because the fact of Dr. Baetefisch not being sworn was not coincidental but the result of the objections raised as a matter of principle and obstinately maintained by him.

Knowledge of the crimes of the SS.

If, contrary to the facts, we were to assume that Dr. Baetefisch was an official member of the SS in the sense of the IMT judgment and had aided the SS and its aims, then, for his conviction, it would also be necessary for him to have known that the SS was used, according to a set plan, for the commission of crimes. The prosecution has not stated of what criminal actions Dr. Baetefisch is supposed to have known nor how he was supposed to have gained this knowledge. Nor has the evidence produced any facts in this respect. On this theme, therefore, I can limit myself to stating the following:

Concerning the Jews it was, of course, known to Dr. Baetefisch, as it was to every German, that National Socialism and thus also the SS pursued a strongly antisemitic policy. He also knew from cases in which he had been requested to intervene that sometimes Jews were also arrested and sent to concentration camps; he had however, as was frequently the case at that time, been told of crimes under penal law, such as: listening to enemy broadcasts, sabotaging the defensive power and others. Beyond that he had

just as little knowledge of the Jewish persecutions by the SS as the German general public. Above all he did not know of the so-called final solution of the Jewish question, i.e. the extermination of the Jews. The prosecution moreover did not assert this at all, nor did it bring any evidence for it.

As far as the persecution of Jews in concentration camps is concerned, this alone, according to the IMT judgment is not a crime against humanity in itself. Furthermore, the knowledge of Dr. Buete-fisch did not cover the/ systematic arrest of all Jews but only a few cases. Those cases did not present themselves to Dr. Buete-fisch as planned and regular measures of the SS but much rather as excesses and outrages. Dr. Buete-fisch had good and forceful reasons for this opinion. His impression of the SS and their behavior was, as is proved by the facts of the case, decided chiefly by the personality of the SS leader Kranefuss. He had to look upon the behavior of Kranefuss as being typical or at least decisive for the SS, particularly since Kranefuss was in close contact with Himmler. Kranefuss, however, like all representatives of national socialism, held the antisemitic point of view but objected to Jews being deprived of their freedom or any more far-reaching measures. It was Dr. Buete-fisch's experience that Kranefuss also put into effect this point of view in all cases brought to him by complaints to the Reich leadership SS.

Cf. especially Doc. Bue. 292 & Exh. 243, Vol. X, page 60 (63-64).

In these circumstances Dr. Buete-fisch in such events had only an insight into excesses by subordinate offices,

because otherwise a representative leader of the SS such as Kranefuss would not regularly have condemned them as excesses and otherwise the Reich SS headquarters would not have regularly ensured that aid was given. But if this was the case with arrests which per se are not crimes against humanity then Dr. Buete-fisch would most certainly have had to think of even more for reaching measures as excesses and outrages had they come to this knowledge.

As far as concentration camps are concerned Dr. Buete-fisch just like everybody else, knew that they existed. He considered the loss of freedom connected with them to be a serious evil and was always prepared to help persons who were threatened by this evil. Of the brutalities and killings in the concentration camps however, he knew just as little as the mass of the German people. Nor did the prosecution bring any evidence which would show any knowledge of those things on the part of the defendant Buete-fisch. It has also been stated in detail with beyond to count III of the indictment that in particular, Dr. Buete-fisch did not hear of such events in connection with the Auschwitz plant. For completeness sake I refer here also to documents

Doc. Bue 252 = Exh. 199, volume 9, page 10 (11-12) and
 " " 147 = Exh. 209, " 9, " 35-36,

The prosecution presented as exhibit 1588 (prosecution document volume 91, page 34) an excerpt from the "Archiv der Gegenwart" (Contemporary Records) of 21 September 1942 which contains a note on the destruction of the village of Lidice in Czechoslovakia. The documents, exhibit 1589 and 1590 (prosecution document vol. 81 pages 35, 36 state,

that the "Archiv der Gegenwart" was also in the records of the legal department chemicals and political economy department of Farben. If the prosecution wish to conclude from these documents that Dr. Buete-fisch knew of the destruction of the village of Lidice then this conclusion is extremely wrong. The events in Lidice were generally unknown in Germany; they were deliberately kept secret. Also Dr. Buete-fisch had no special source of information to hear about such things. The fact that a note on Lidice got into one single archive in Germany namely the "Archiv der Gegenwart", proves that this was a mere accident and that the matter was otherwise kept secret. Dr. Buete-fisch did not, of course, have any opportunity to read the "Archiv der Gegenwart". The idea that a technical member of the Vorstand of Farben would regularly read the archive volumes of another legal department or the political economy departments is clearly absurd. Even the prosecution did not allege this. The prosecution documents on Lidice are, therefore, quite irrelevant.

If, in the letter from the Gaebereich of 4 March 1941 (prosecution Exhibit 1422 = NI 11084) to Sparte II on the occasion of the erection of the Synthesis section of Auschwitz the Goering edict of 18 Feb 1941 is mentioned (prosecution exhibit 1417) NI 1240 Volume 72, according to which Jews and Poles had to be removed from Auschwitz, then we must point out here expressly that those measures were not planned by the SS but were orders of the highest state offices, and were called "population policy measures."

Part IV

Insofar the prosecution errs in mentioning this fact on page 8 of their trial brief, part IV, the evacuation "executed by the SS".

The SS was concerned with the forced labor program only to the extent that they used the concentration camp internees as labor and according to the IMT judgement took steps continually to supply a sufficient flow of labor to the concentration camps (official wording in German Page 305 - 306) Dr. B. Dietrich, of course, knew that the concentration camp internees were used for work. This fact alone, however, cannot be regarded a criminal act. On the contrary it is the general attitude that internment with work is easier to bear

then internment without work. The criminal act, according to the IMT judgment, lies much rather in the fact that people were arrested and confined to concentration camps in order to keep up their supply of workers. But hardly anybody in Germany knew anything ^{of} this activity. The concentration camps were said to be purely a means of fighting political opponents. The idea that they served the forcible recruitment of labor is surprising to the German public even up to the present day Dr. Buetevisch, at any rate, never heard of it.

In this connection it shall also be mentioned that the defendant Dr. Buetevisch, within the limits of the so-called circle of friends never had a chance to gain an insight into the criminal acts of the SS. The prosecution, with document Exhibit 1587, (prosecution document volume 91, Page 29) presented the draft for a memorial speech by Kronefues for the deceased SS Obergruppenfuhrer Heydrich. This speech was not known to the defendant Buetevisch. He neither heard it nor did hear of it in any other way. It is not even certain whether or not this speech was ever made, since other members of the circle of friends are also doubtful about it.

Cf. the judgment in the Flick case - case V.- The prosecution has presented further in the document, exhibit 1834 (prosecution document volume 91 page 24 a memorandum with notes for a speech which Himmler was to make in December 1943 in his field headquarters Hochwald for the circle of friends. This memorandum does not reveal anything about the details of the speech. In reality the speech did not contain anything which would permit the conclusion of criminal activities on the part of the SS.

Himmler on the contrary stated expressly,

"that his name, among the general public, ^{was} known as that of an extremely strict and dangerous ^{was known to him} man, but in fact was unfounded. But at any rate it was better to have this false fame. "

Doc.Bue 205 = Exh. 238 Volume 10, Page 28 (32)
 " " 204 = " 239 " 10 " 34 (45)
 " " 264 = " 244 " 10 " 66 (90-91)
 " " 327 = " 267 Suppl.Vol.1 " 67

The above documents further prove that, within the limits of the circle of friends, on other occasions also nothing became known of criminal acts of the SS.

The prosecution lacks all evidence for the fact that Dr.Buetelesch had knowledge of the planned criminal activities of the SS. The prosecution, however, and this must be particularly stressed is fully responsible for producing evidence. I refer to the judgment of Military Tribunal II, case II, concerning opinion of judge Fitzroy Philippe S.t. and also to the judgment of Military Tribunal No.IV in case V where the full responsibility for evidence of the prosecution is particularly stressed. The defendant cannot even be accused of having known more than others because special sources of information had been available to him. Dr. Buetelesch, in political matters of this kind had no special sources of information and the prosecution did not bring any evidence for this fact. On the contrary thanks to the amount of work in the purely technical and economic field he was much less in a position than others to take an interest in affairs outside of those limits.

It must furthermore be stressed that the ^{IMT} judgment

makes a positive knowledge of certain definite criminal acts a sine qua non. The fact that the defendant must have known about those or other acts is not enough. Just as little would it suffice if the defendant had heard only rumors. The judgment of Military Tribunal II in case IV against Pohl et al shows clearly the demands to be made on the responsibility of the prosecution in respect of the evidence concerning the positive knowledge of a member of the SS of criminal acts. This judgment, in the case of 4 defendants, did not regard the knowledge of criminal acts by the SS as having been proved although those defendant were high SS leaders and worked for years professionally in the SS. Those defendants must certainly had special sources of information on the activities of the SS available. ^{to them} If, according to the judgment of Military Tribunal II just quoted, criminal acts of the SS remained unknown to them, then one cannot possibly accuse the defendant Bueflesch of having gained knowledge concerning such matters. Much rather it was as the defendant himself stated:

"I had no knowledge of the criminal activities. I have - that I must state quite openly - all that time thought such things to be impossible and even today regard them as diseased excesses which would never occur to a normally thinking human being."

German transcript Page 8908, English page 8825.

According to the IMT judgment a member of the SS is liable to punishment if either on joining he already knew of the criminal character of the SS or if he later obtained knowledge thereof and remained in the SS in spite of it. The first case, that of the member of the SS already knowing on joining, of the criminal activities

of the SS, does not apply to the defendant Dr. Bueteufisch. This is shown merely by the fact that Dr. Bueteufisch received honorary membership as early as spring 1939, while, according to the IMT judgment, only events later than the 1 September 1939 could be regarded as criminal acts. There remains, therefore, only the second to be considered, that Dr. Bueteufisch later got to know about the criminal acts and in spite of that, did not leave the SS. In this case, however the question arises of whether, in this case, it would still have been possible to leave the SS.

To leave the SS was, even during the years before the war, extremely difficult and coupled with grave risks. After the outbreak of war, however, applications to leave were no longer accepted at all. They even resulted in disciplinary or penal proceedings. The SS considered leaving to be an act of faithlessness which must be severely punished. This is shown by a speech by Himmler in Posen on 4 Oct 1943 which was presented in the IMT case as SS document 98.

"Thank God we have had so far not a single case among our ranks of a well known SS man becoming unfaithful. Here there should be but one guiding principle: If, within your reach, anyone should ever be unfaithful to the Fuehrer or to the Reich, be it only in his thoughts, then you must ensure that that man is removed from the order, and we shall take care that he is removed from life. For everything can be forgiven in this world but among us Germans there is one thing that can not be forgiven: that is unfaithfulness."

Everyone who left the SS was reported to the Reich Main Security Office for registration in the so-called "Blue-file". Whoever was in this file was considered to be a political suspect and in certain circumstances had to reckon with being consigned to a concentration camp.

Only in very special, exceptional cases was it possible

to leave the SS without such consequences, for instance, in case of continuous serious illness or on entering the Wehrmacht permanently as a professional soldier.

For the defendant Dr. Baetefisch it was, accordingly, impossible to leave the SS during the war. The exceptional cases mentioned did not apply to him. For him there was no conceivable, convincing reason for leaving, because he held a purely honorary rank without obligation to perform any duties and, therefore, could not refer to practical hindrances such as sickness or professional overwork. An application to leave would, therefore, have been understood only as an expression of political enmity and simultaneously as an act of unfaithfulness. Such a step, therefore, would have been connected in his case with direct danger to his freedom and in certain circumstances to his life.

Testimony Dr. Baetefisch, Gorman transcript page 8907 English /⁸⁹²⁴ Hrd Dr. Baetefisch therefore, got to know during the war of the criminal aims of the SS and therefore, renounced his honorary membership he would have subjected himself to extreme hardship. The protective concept of hardship provides that no conduct is punishable if it was necessary in order to avert danger to freedom or life or to another legal right which is of greater value than the violated legal right. It is generally recognised that the existence of hardship can also be validly applied within the scope of control council law No. 10. I indicate specifically

the verdict of Military Tribunal IV in case V against Flick et al. and also to the quotations there.

The same view is adopted by the supreme denazification court for the British Zone in its judgments,

for instance the verdict of 15 January 1948
(published in the periodical "Die Spruchgerichte"
1948, Page 114):

"The senate of the Supreme Denazification
court have unanimously affirmed that (the
applicability of hardship throughout the
administration of justice on the grounds that
the concept of hardship belongs to the generally
accepted principles of law on which the Muern-
berg verdict is also based."

The same attitude reigns also in literature ,
cf. especially Prof.Sauer in the periodical
"Die Spruchgerichte 1947 page 6 (7), Mittelbach
s.o.O.1948 (page 1 ff)
Haenschel, s.o.O. 1948 (page 100 (101 ff.).

There can be no doubt that the defendant
Dr.Buotefisch had he heard of the criminal charac-
ter of the SS would have endeavored in every
possible way to give up his honorary rank in the
SS. This is shown by the mere fact that on being
requested by Kranofuss to get a uniform he used
this as the grounds for a request for the cancel-
lation of his honorary rank and that he repeated
this demand in spite of having the dangerous con-
sequences frequently pointed out to him.

Of.Doc. Bue 201 - Exh.233, Vol.10, Page 8
(10-11).

If this violation of the reservations permitted to
Dr.Buotefisch led to such a step, then it can
hardly be doubted that the much weightier fact,
of knowing the criminal character of the SS would
have given him even more cause to leave the SS.
But in the circumstances described he would have
been unable to complete this attempt successfully
and actually to leave the SS without countering
direct danger to his freedom and life. His
remaining in the SS would, therefore, have been
justified or

at least have been excused on the grounds of Lordship. For this compelling reason too liability to punishment because of his alleged membership of the SS is out of the question.

The statements so far have shown that the distinguishing features outlined in the IMT verdict of punishable membership of the SS do not exist in the case of the defendant Dr. Bueterfisch. Dr. Bueterfisch never was an official member of the SS at all, in the sense of the IMT verdict, he never aided the SS and its aims in any way, nor did he know of the criminal character of the SS. The sentencing of a member of the SS, however, demands not only that features of the crime exist but also that the member of the SS be personally guilty. This guilt does not exist, if exceptional reasons justify or excuse membership. Such is the case in respect of the particularly conflicting position in which the defendant Dr. Bueterfisch found himself.

It is generally known that the passing of a sentence for membership in an organization declared to be criminal requires personal guilt of the individual concerned and that this guilt can be excluded for exceptional reasons. The IMT judgment points out specifically that sentence may be passed only in accordance with "accepted principles of law" and that "one of the most important of these principles is that penal guilt is a personal one and mass punishments are to be avoided." (Official text in German language page 287). This principle has also been expressed in the verdicts of the American military tribunals in Nuernberg over and over again. Thus in the verdict of military tribunal IV

Page IV

Thus in the Judgment of Military Tribunal IV, Case V, versus Flick et al, it is stated:

"No one may be found guilty unless his personal guilt is proven."

The same view is taken in the judicial decisions of the Supreme Denazification Court (Oberster Spruchgerichtshof) for the British zone, of judgment of the Supreme Court of 23 September 1947 (published in the periodical "Die Spruchgerichte" 1947, page 43):

"There is no doubt, however, that within the spirit of the Nuremberg judgment the punishment of an individual member of an organization declared to be criminal can only be pronounced according to his personal guilt, if the recognized general principles of criminal law ... are applied. The Nuremberg judgment itself expressly states, the decision ... was to be made according to recognized principles of law; it is clear here that these recognized principles of law should also be respected in cases against individual members of organizations declared to be criminal."

There is complete agreement on this point among the authoritative authors, of. Mittelbach in the periodical "Die Spruchgerichte" 1948, page 1:

"Every punishable act is one of personal guilt; mass punishments should be avoided A guarantee should be given not to punish innocent persons. This aim, however, can only be reached if the personal guilt can be thoroughly checked in each case, a just execution of the principle of guilt is demanded, so that ^{grounds} for exclusion from personal guilt will also be respected."

The conflicting situation in which Dr. Baetefisch found himself was the following: Dr. Baetefisch faced a most critical alternative in deciding upon the acceptance of the SS honorary rank (Ehrencharge) offered to him. As for his becoming a regular SS member or even only a regular honorary leader, his decision was strictly negative. But then he was faced with the extraordinary situation of being offered an honorary rank which would be carried only on the internal

SS lists, whereas he was expressly exempt from the basic requirements of the SS (duty of obedience, rendering services, wearing a uniform, oath of allegiance). Under these conditions as they are described, the honorary rank did not at all constitute genuine SS membership. Even anyone who wanted to oppose this view will have to admit that, at the least, it is a very doubtful and difficult border-line case. But if it is a serious border-line case today among jurists whether an SS membership actually existed or not, one could hardly hold it against Dr. Baetefisch if at the time he did not anticipate a genuine SS membership after having secured the basic reservation mentioned. For him, on the one hand, there was a purely formal honorary rank which did not materially bear the character of SS membership and did not practically bind him to anything. But the acceptance of the rank guaranteed to him the valuable and ever more important opportunity to continue to help politically oppressed people successfully. On the other hand, rejection of the rank would mean unpredictable personal and material dangers, and the end of the preserved path whereby help could be brought to politically oppressed people, plus the end of pursuing an objective personnel policy at Brabag in co-operation with his colleagues.

The decision made by Dr. Baetefisch in the face of these critical alternatives after much hesitation and re-consideration, must in retrospect be recognized as correct. In the period after the award of the honorary rank, Dr. Baetefisch, as is known,

was able to give help and protection to political persecutees in a number of cases through Kranefuss. Would it have been more correct and more to his credit if he had refused the purely formal honorary rank and thus destroyed the possibility of giving help, with the result that the persons affected would be left to their disastrous fate? - But even if one wanted to judge Dr. Buetefisch's decision as wrong from the viewpoint of present, more comprehensive, well-known facts, it is impossible to bring charges on this basis against Dr. Buetefisch.

The dilemma in which Dr. Buetefisch found himself in accepting the honorary rank continued throughout the period which followed. If the original alternative was the acceptance or refusal of the rank, it was later the retention of the rank or separation from the SS. According to the judgment of the IMT only the period after 1 September 1939 is relevant for the legal decision. At this time the dilemma described was even worse for Dr. Buetefisch, because the results of attempted separation from the SS during the war would have been especially grave both for him and for those persons who needed his help.

Because of this dilemma any criminal guilt is out of the question for two reasons. Dr. Buetefisch's behavior is thus covered by the concept of necessity, (Notstand). As already explained,

behavior is justified by necessity if it was necessary to avoid a danger to freedom or life or to some other legal right which is of higher value than the legal right actually violated. The original and typical case where necessity is applied is the avoidance of an attack upon life and limb. Yet today it is recognized in criminal law of all civilized states that necessity is not limited to this case, but has a more comprehensive sphere of validity. Thus it is always applicable if legal rights of great value are endangered and can only be protected through acts which violate legal rights of lesser value. The criterion is the "proportionality" of the legal rights, that is, the weighing of the protected against the violated legal rights.

Cf. Wharton, Criminal Law Sec. 126, page 176, et seq., where the principle of proportionality of legal rights is introduced as the decisive criterion of necessity, and where it is stated:

"In the field of necessity one can hardly find a large number of sharply defined regulations. Necessity itself creates new law, is stronger than legal rules and what is always shown to be reasonable and equitable in such cases, is also lawful." (rechtmässig).

"The English text is printed by Haaseel in "Die Spruchgerichte" 1948, page 102, note 12 and in the Flick Judgment, Indictment Count I at the end).

In his dilemma Dr. Buetevisch had to weigh the following legal rights: If he had refused the honorary rank offered to him or had tried later to give it up, he would at once have been exposed ^{to} unpredictable dangers. Besides that, the result would have been that large numbers of political persecutees would no longer have been able to seek his assistance but would have been left

to their fate without protection. The legal rights at stake were primarily personal freedom, in given circumstances also life itself. If, on the other hand, Dr. Buetefisch accepted the honorary rank and retained it, then there would be no legal right at all which would thus be violated. Even if one wanted to demonstrate, contrary to the proven facts, that Dr. Buetefisch's honorary ranks had furthered the aims of the SS in any way, it would still involve a very minor advancement and hence would involve only a highly insignificant violation of legal rights. If one considered what important legal rights were protected by the acceptance of the honorary rank and what insignificant violation of legal rights might be associated with it, this consideration could lead only to the acceptance of the rank. The acceptance of the honorary rank and its retention is, in this case, the only action which "appears to be reasonable and correct." Hence this behavior was covered by the recognition of necessity and was, therefore, lawful.

The dilemma described also shows that Dr. Buetefisch was in any case subjectively unaware of having acted unlawfully in connection with the SS honorary rank.

It is generally known that legal guilt presumes that the perpetrator was aware of doing something unlawful. Of course it is not required that he knows he is violating penal codes or even legal provisions. But the perpetrator must be aware that through his act he is injuring the principles of morality and humanity. The IMT judgment, out of consideration for the very fact that the IMT trial and the present trials are establishing retro-active penal codes,

expressly pointed out that the perpetrator must have known "that he acted unlawfully" and that he "acted in defiance of all law" (official text in German, page 245). The reasoning of the Supreme Denazification Court (Oberster Spruchgerichtshof) for the British zone and literary commentaries also concur in saying that the perpetrator must be aware of having acted unlawfully.

Cf. Geier in the periodical "Die Spruchgerichte", 1927, page 71, et seq.

Werner, loco citato, 1948, page 5 (6).

The difficult alternative which Dr. Bueterfisch faced and his reflections have already been described in detail. The decision which he made in this situation should still be considered to be correct for good reasons. But even if the decision had been wrong, it does not alter the fact that Dr. Bueterfisch acted according to the best of his knowledge and belief and held the decision to be correct. He accepted and retained the honorary SS rank because, after careful reflection, he believed this to be the right way out of his dilemma. I refer here to the excerpt attached in the enclosure from the opinion of the catholic moral theologist Prof. Kraus, in Mainz, who after thorough investigation, concludes that Dr. Bueterfisch's behavior must be evaluated from a moral standpoint, and it must not in any case lead to charges against him. In these circumstances Dr. Bueterfisch can not possibly have been aware of having violated principles of morality and of having acted unlawfully. On this account, too, there is no legal

guilt on the part of the defendant.

In concluding I establish that punishable SS membership on the part of the defendant Dr. Buete-fisch is out of the question for several obvious reasons:

- a) The exceptional position occupied by Dr. Buete-fisch in view of his reservations makes it impossible to regard his honorary rank as official SS membership as defined by the IMT Judgment. - - - -
- b) Dr. Buete-fisch completely refrained from rendering to the SS and its criminal purposes the assistance required for passing sentence on him. He used his honorary rank exclusively to counteract possible excesses.
- c) Dr. Buete-fisch had no knowledge of the criminal character of the SS. The prosecution has not proven anything on this point.
- d) In accepting the honorary rank and in the period following, Dr. Buete-fisch was in a peculiar dilemma which renders his behavior lawful and, in any case, excludes any criminal guilt.

Circle of Friends.

The prosecution has charged the defendant Dr. Buete-fisch with participation in the so-called Circle of Friends of the Reichsfuehrer SS. Relative to this Circle of Friends, its character and its importance, I refer to the extensive evidence previously introduced and evaluated in the judgment of military tribunal IV, in Case No. V against Flick et al.

Cf. excerpt from judgment mentioned in Doc. Bue., Vol. 10, page 92,

also: Doc. Bue. 204-Exh. 239, Vol. 10 page 66 (67, 70)

" " 264- " 244, " 10, " 34 (35-36)

This evidence clearly shows that

"no importance in a criminal sense could be attached"

(Judgment of Military Tribunal IV, Case No. V).

For the sake of completeness the evidence which I presented in this trial under the heading Circle of Friends is also listed here. In

Doc. Bue. 294, Exh. 237, Vol. 10, the affiant Shueden, a close acquaintance of Buetefisch graphically describes the origin and nature of the Circle of Friends under the regie of Kranefuss.

The affiant Blossing, member of the Circle and acquaintance of Buetefisch, describes the latter's participation in the affairs of the Circle and the course which these took.

Doc. Bue. 205, Exh. 238, Vol. 7

The fact that the Circle of Friends was known only to a few SS-Fuehrer and had no official ties with offices of the SS, is confirmed by the former SS-Obergruppenfuehrer Berger and Ohlendorf.

Testimony Ohlendorf, transcript, German page 4526-4527, English page 4505, 4506.

With further evidence the prosecution wishes to show that the Circle of Friends had a special relationship to Himmler, and that a special selection of members was made.

Prosecution evidence:

NI-9971, Exhibit	1581	Book 91
NI-6025 F, "	1582, "	91
NI-399, "	1583, "	91
NI-8106, "	1974, (Cross-examination)	
NI-12148 "	1596, Book 91	

All the correspondence listed in the documents was unfamiliar to my client. They only show the efforts of Kranefuss to keep the Circle together.

Cf. Doc. Bue. 294, Exhibit 237, Book X

it is irrelevant to construe any sort of activity out of the frequent participation in the social evenings (die Abende), as the prosecution attempts to do with Doc. 8106. Exhibit 1974, presented during cross-examination. Also the argument that one might have declined the invitations is not sound, since any internal agreement of Krensfuss with SS officers was completely unknown and there was no cause to avoid the Circle.

Defense Evidence:

Cf. Doc. Bue 336, - Exh. 291, Supplementary Vol. III. I can limit myself, therefore, to establishing the following on the relation of Dr. Bueckfisch to the Circle of Friends:

Dr. Bueckfisch was invited to the meetings of the Circle of Friends only on Krensfuss' initiative.

Cf. Doc. Bue. 169 - Exh. 142, Vol. 10, p. 95,

" " " 294 - " 237 " 10 " 24 (26)

The invitations were given for the first time during 1939. Hence he did not take part in earlier events such as the tour of inspection of the Dachau concentration camp in 1936, which is mentioned in the quoted judgment of Military Tribunal IV, Case No. V. In the years following 1939, too, he only paid relatively few visits to meetings of the Circle of Friends. In many cases he stayed away.

Cf. Doc. Bue. 137 - Exh. 210, Vol. 9, page 37

" " 143 - " 211, " 9, " 39 - 1

" " 336 - " 291 in Suppl. Vol. III.

In the affidavit of my client presented by the prosecution during cross-examination as Doc. NI-6233 - Ex. 1876, contains the sentence:

"My membership in Himmler's Circle of Friends gave me legitimation with respect to all high SS offices in Berlin. It gave me access to the high SS Fuehrers."

this statement can not be recognized as evidence. This affidavit was not made according to proper trial rules, as shown by Doc. Bue 355 - Exh. 293 in Supplementary Vol. III. Moreover, as the Tribunal can see by comparing transcript of the hearing, submitted by me as Doc. Bue. 345, Exh. 292, in Supplementary Volume III, it does not present any relevant compilation of what Dr. Buettfisch has testified during the examination. The sentence quoted, namely, "It gave me access to the high SS Fuehrers," is not contained anywhere in the hearing.

It is far more correct to say that Dr. Buettfisch did not enter in to any kind of relationship with any SS officers, through the Circle of Friends.

And now the prosecution seeks through further evidence to conclude that the participants in the Circle of Friends social evenings had opportunity to learn of the criminal purposes of the SS.

NI-8108	Exhibit	1587
NI-10149	"	1588
NI-12398	"	1589
NI-12399	"	1590
NI-12401	"	1593
NI-14519	"	1975 (cross-examination)
NI-5637	"	1834

The fact that Dr. Buettfisch obtained no knowledge of any kind of criminal acts of the SS, through the Circle of Friends, has already been presented in an earlier paragraph. The death of Kronefuss' speech concerning Heydrich

is unknown either to the defendant or to various other members of the Circle. If Kranefuss had delivered the speech Dr. Buetevisch would have been aware of it, since Heydrich was a bitter enemy of Kranefuss, as the latter had often related to Buetevisch because of his (B.'s) aversion to the Gestapo.

Evidence:

Doc. Bue. 292, Exhibit 243, Vol. X.

Relative to prosecution document Exh. 1975 - NI-14519, which deals with the memorandum of a planned lecture by Ohlendorf in the Circle of Friends concerning partisan warfare in the Crimea, it should be remarked that Dr. Buetevisch never heard this lecture since it was actually not held.

Cf. Doc. Bue. 339 - Exh. 270, Supplementary Vol. III.

Himmler's speech in Hochwald, in December 1943, to which the prosecution document exhibit No. 1834 relates, gave no information on the criminal character of the SS according to the statements of all witnesses.

Cf. Doc. Bue. 338, Exh. 279, Supplementary Vol. III

" " 264, " 244, Volume X

" " 204, " 239, " X

Testimony Dr. Buetevisch, transcript German page 8918,
English " 8832.

To the very end Dr. Buetevisch was a "new-comer" in the Circle of Friends who was little recognized by the professional SS-Fuehrers, and who usually foregathered with similarly-minded men at the social evenings of the Circle of Friends, such as the affiant Blessing who was in the same position.

Cf. Doc. Bue. 205 - Exh. 238, Volume 10, page 28 (29-30).

The authoritative individuals in the Circle of Friends respected

the technical achievements and human qualities of Dr. Bueteifisch. But they were aware that he "did not have to perform special Party or SS-services."

Cf. Doc. Eus 169 - Exh. 142 Vol. 10, page 95 (97).

It remains only to point out that Dr. Bueteifisch made as little use of his SS honorary rank for business purposes as of his relation to the Circle of Friends.

Cf. Doc. Eus. 201 - Exh. 233, Vol. 10, page 8 (11-12).

Donations.

In connection with the Circle of Friends, the prosecution makes Dr. Bueteifisch responsible for certain donations which Farben made to the SS during 1942-44.

Prosecution Documents:

NI-8126,	Exhibit	1584,
NI-12400,	"	1585,
EC 454,	"	1591,
EC-453,	"	1592,
NI-2856,	"	1594,
NI-3807,	"	1595.

These documents and the relevant material submitted by the defense show the following:

At the end of 1941 Kranefuss requested Dr. Bueteifisch to arrange that Farben might share in a donation for the SS. The donation was ear-marked for Christmas bonuses for the survivors of SS men killed in action. At the same time Kranefuss also asked the Vorstand member of the Kontinentale Oel A. G. Dr. Fischer, who was also present, for a similar contribution. Dr. Bueteifisch pointed out to Kranefuss that he was not competent to authorize grants for Farben and at the request of Kranefuss he simply undertook to forward the matter to Geheimrat Schmitz.

Beyond that he expressed his personal extreme disinclination to make such donations.

Testimony Dr. Buetevisch, transcript, German
p. 8923, English p. 8837.
Doc. Bue. 194, Exh. 240 in Vol. X, page 52.

Then Dr. Buetevisch simply forwarded Kranefuss' request to Geheimrat Schmitz. The latter, i.e. the Central Committee, was solely competent at Farben for the decision concerning such donations and their amounts. Dr. Buetevisch did not take part in such decisions. In the period following, he was not again approached with such requests for donations. These requests were rather directed directly to Geheimrat Schmitz.

These facts are also confirmed by documents submitted by the prosecution. Prosecution document B. 1585 states expressly that the remittance of the first donation was made at the beginning of 1942 "by order of Geheimrat Schmitz". Prosecution document Exhibit No. 1594 confirms that Kranefuss referred directly to Geheimrat Schmitz for further donations. Prosecution document No. 1595 shows that the recipient of the donations was also aware that they came only from Geheimrat Schmitz, and that the corresponding letters of thanks were sent only to Geheimrat Schmitz. Document Exhibit No. 1592 contains a list directed to Himmler concerning the donations and their contributors. In this list Dr. Buetevisch is indeed listed as the contributor of a donation along with Geheimrat Schmitz. But the entire remainder of the evidence shows that the mention of Dr. Buetevisch here can only be construed to be a gesture of polite recognition which the recipient of the donation wished to render Dr. Buetevisch for having forwarded his request for financial contributions. Moreover, this is the sole document

in which Dr. Buotefisch appears at all in conjunction with the donation-affair. These facts can not be made to construe any responsibility of Dr. Buotefisch for Farben donations. Dr. Buotefisch was in no way competent for distributing such Farben donations. In practice, too, he had no opportunity to make donations for Farben. The rule at Farben according to which solely Geheimrat Schmitz or the Central Committee was competent for this purpose, was absolutely authoritative, both practically and formally.

But Dr. Buotefisch was not only incapable of effecting Farben donation at the request of Kranefuss; he was just as little authorized or in a position to refuse this request himself. Neither in a positive nor a negative sense could he come to any kind of decision. He had no alternative whatsoever, therefore, except to acknowledge Kranefuss' request for a donation and to forward this request to the competent office, namely, to Geheimrat Schmitz. In so doing, he did nothing to further Kranefuss' request for a donation.

Of. Doc. Bue. 194 = Exh. 240, Vol.X, page 52 (53).

Only for the sake of a complete picture, do I refer to the fact that Dr. Buotefisch had not the slightest reason to believe that the donations to the SS might possibly be used for criminal purposes of the SS. Kranefuss had expressly told him that the donations were only earmarked for Christmas bonuses for survivors of SS men killed in action, and Dr. Buotefisch, in view of his experience with Kranefuss, had no cause at all to doubt his statement.

Cf. Doc. Doc. 194, Exh. 240, Vol. X, page 52(53).

In the Circle of Friends, too, he could not have learned any different, since here matters of donations were not discussed.

Cf. Doc. Doc. 326, Exh. 289, in Supplementary Vol. III.

This was done tactfully with the numerous members of the Circle, who as officials could not afford any financial contributions. Moreover, those who contributed acted on the basis of Kranefuss' statements that the donations would be used for social and cultural purposes.

Cf. Doc. Doc. 204, Exh. 239, Vol. 10, page 34 (41-42),
" " 264, Exh. 244, Vol. 10, " 66 (85).

Nor would Dr. Bueterfisch have had a chance to draw any conclusions from the amounts of the contributions, since they were unknown to him. Not even the contributors of individual donations which did not include Dr. Bueterfisch, had any knowledge, generally speaking, of such matters.

Cf. Doc. Doc. 264, Exh. 244, Vol. 10, page 66 (89).

Only a few persons know the actual amounts of the donations. Such was the composer of the letter to Himmler which the prosecution presented as Exhibit No. 1592 (Document Vol. of the prosecution 91, page 3); it may well have been Kranefuss. In addition, this knowledge was in the possession of only a few persons who were concerned with raising and administering the funds, namely, the representatives of the participating banks and the signatories of the requests for contributions, such as Steinbrinck, who was a defendant before military tribunal IV in Case No. V.

Cf. Judgment of military tribunal IV, Case No. V.

Another point to be considered is that the powerful SS at this time no longer

Bue. IV.

needed to take recourse to private contributions for its own purposes. It had its own funds amounting to billions.

Cf. Doc. Bue. 326, Exh. 289, in Supplementary Vol. III.

If it was maintained in the Flick case, that it is unlikely that Himmler raised such large sums during the war for social and cultural purposes, then I may point out that a single cultural project of Himmler's the construction of Wevelsburg, had eaten up RM 6 500 0 by 1944.

To summarize: the defendant Dr. Buetevisch is not responsible, either legally or in practice, for the donations of Parben to the SS. Nor has it been demonstrated how he could have concluded criminal purposes in the use of the funds. That is, in this connection, too, Dr. Buetevisch has not made himself guilty by supporting the SS or to its criminal purposes in any way.

The determination of the actual circumstances and the legal evaluation thus lead to the conclusive result namely, that the defendant Dr. Buetevisch is not guilty under Count IV. The actual circumstances have been proven in every respect. The consideration governing the legal evaluation, are generally recognized in the opinions of all competent courts and writers. If the Tribunal still retains any doubt whatsoever, then, on the defendant's behalf, the sentence should be quoted here which military tribunal IV brought forth in its judgment in Case No. V as one of the main principles of Anglo-American criminal law:

CLOSING BRIEF FOR DEFENDANT

Dr. B u e t e f i s c h

Count V of the Indictment

Conspiracy

The evidence submitted by the Prosecution in support of its theory, has been explained - through the subsequent evidence - to such an extent that conclusions therefrom as under Count V seem to be no longer permissible. I confine myself to referring to Dr. ter Meer's testimony, German transcript page 7226, English page 7166.

Moral-theological Opinion on the Membership of

Herr Bueckelmann in the SS,

submitted by Dr. Johannes Kraus, equanig professor in
ordinary of moral-theology at Johannes Gutenberg University
in Mainz.

The opinion here submitted is based entirely on the presenta-
tion of facts according to the defense documents. The present
reviewer cannot, of course, be competent to judge whether this
presentation comprises the facts in their essential outline and
in all aspects. It must be left to the Defense to satisfy the
Tribunal that the fundamental character of the outline of the
documents, remains essentially unchanged and that no fresh
factors will have been added which would fundamentally change the
factual picture.

A. The Facts according to the Defense Documents.

.....

B. Basic Exposition on the Moral-Theological Principles involved

In moral-theological reasoning the problem is seen from a
viewpoint different from the purely legal one. Consequently le-
gally important factors lose, to a certain degree their import-
ance from the moral-theological point of view. Moral theology
is less concerned with the legal decision on whether or not
honorary SS leadership is included in the last statement regard-
ing the criminal character of the SS; whether in view of Bueckel-
mann's declared reservations in respect of refusal of strict
and unconditional obedience, in respect of non-implementation
of the swearing-in, and in respect of the refusal to demonstrate
his being an SS leader by wearing uniform, he was at all a member
of the SS in a strictly legal sense. The question of being aware
of certain things, equally assumes a different aspect as will
be seen later-on. Thus it may be useful to point out that moral-
theological concepts may not simply be taken to correspond wholly
with equal or similar legal expressions, but that they require a
certain change in the intellectual approach.

From the moral-theological standpoint one can only speak of guilt
in the case of personal guilty activity. The mere presence in an
organization whose members were frequently used for criminal acts,
does not - from the moral-theological point of view - automati-
cally constitute guilt, even if there certain knowledge of this
disreputable use existed.

Even the consideration "that the criminal activities of the SS were the logical result of the principles on which it was based" does not make it in any case and in all circumstances morally inadmissible to enter into any relations with such an organization. The only decisive factor for finding moral guilt lies here in the answer to the question whether entering into such a relation constitutes a "causa mali", i.e. to what extent the assumption of membership exercised an actually positive influence on the detestable act carried out, or intended, in or by the organization, thus to what extent that relationship became a joint deed or joint act. The measure of guilt follows from the measure of this positive connection, from the measure of co-operation in the broadest meaning of the word.

The question of moral guilt always involves two aspects, the concrete facts and the moral aspect (objektiven Sachverhalt und subjektive Seite).

1.) Concerning the concrete facts:

a) first of all the causal connection with that which was detestable in the organization must be investigated. The causal connection can be a multiplicity of various forms and degrees.

Causal connection exists already when the alien inner evil aims have been absorbed by one's own will and been made one's own aim. - It exists all the more if, in some way, assistance is rendered to the perpetration of a criminal act by word or deed or even during its actual execution, i.e. if one actually co-acts. (Here the moral-theological conception of co-acting or complicity is wider than the juridical one and includes the conspiracy in the strict sense). - Complicity exists moreover if by agreeing to unconditional obedience one offers oneself unrestrictedly to the committing of any crime; regarding which we can, in our case, ignore the difficult question of the extent to which the qualification "insofar as it does not come into conflict with God's commandments and moral law" is not contained "as ipso", thus automatically and always, in a sworn undertaking to unconditional obedience). - Complicity in the sense of positive influence would also be established if the publicly demonstrated membership, having regard to the person's prestige, would have to be considered as approval or encouragement of an immoral act. - Co-action in some way also exists if, even without participation by the inner self in the detestable use, material deeds are performed which are turned to bad use; in this connection it must, however, be considered to what extent the particular person's material deed was actually necessary or an indispensable element for the materialization of the bad act.

b) Nature of Complicity.

Above statements demonstrate in themselves the multifariousness of co-action. According to the nature of the variety, moral theology distinguishes between "cooperatio formalis" and "cooperatio materialis".

Formal co-operation ("cooperatio formalis") is any activity which participates "formaliter" in achieving something evil, i.e. insofar as this is morally evil. - It would exist in the personal co-execution of a morally evil act, as well as in an actual conspiracy to a morally evil deed, in advice or a proposal concerning the execution, in connivance, or in making available the means with the declared intention to promote evil. Generally expressed: Formal co-action always exists either where the morally evil is absorbed into one's own will, or where the deed committed by oneself produces evil by reason of the deed's immanent sin, i.e. an aim incorporated in the carrying out as such, - even if it takes place independently of one's own views. An example of the latter possibility would be the case of a surgeon's assistant who, against his inner will and "by force of circumstances", yet actually participates in a morally inadmissible operation.

Material co-operation ("cooperatio materialis") means, according to its concept, that that which is being done or given or performed by the person himself, somehow assists in achieving something morally bad and thus enters into a causal connection with a morally evil act. Without this effect there would be no participation, and thus there could be no question of any possible guilt. In the case of material co-operation - as essentially different from formal co-operation - the deed perpetrated by the person himself is not already by its inherent nature, independently of its subsequent utilization, directed to an evil purpose. In itself the personal act is, at least morally, indifferent; i.e. it can be turned to good as well as to evil. Thus by its own nature it has no direct causal connection with the morally detestable. If, in spite of this, it subsequently acquires such a connection, this is not due to the person's own deed but to the evil intentions of someone else who brings about such connection. It is not a cause directly in itself but becomes indirectly the joint cause of an evil act through being so utilized by someone else. Take for instance the work of a nurse who cleans and sterilizes the surgical instruments which are used by the surgeon for a morally inadmissible operation. - Subscriptions to a morally objectionable organization fall into the same category as the example quoted. These acts are in themselves morally indifferent in that they can be used for good or evil. Their misuse is not the fault of the originator but of the user. - It may be particularly stressed that in respect of the entire field of so-called material co-operation the principle is: Even a person's knowledge of the evil use of his activity does not alter the innate nature of that activity. Knowledge of the subsequent evil use on the part of someone else, in itself does transform material into formal co-operation. There is, however, one qualification: namely that without the person's own act the other person's evil act would simply be impossible. If the person's own act is an indispensable requisite, so that in its absence the other person's evil act could not at all be effected, then the causal connection with the evil act would be of a

totally different character so that it could no longer be regarded as purely material co-operation.

c) Moral-theological Evaluation of Formal and Material Co-operation.

Where moral-theological evaluation intends to be more than mere utility evaluation, it refuses to judge an act merely or primarily by its success. Thereby it does not, by any means, abstain from relevantly investigating the effects or circumstances of an act. An act acquires its basic primary moral character, however, by that which is being done. If that which is being done is in itself evil, then it cannot in any circumstances become a morally admissible act. Secondly the circumstances (effects, results, act) impose an additional, accidentally moral character so that they may by no means be ignored. Yet, only too easily any effects confront effects in this secondary field so that in certain circumstances bad effects may be or even have to be accepted in order to avoid other effects. As long as the basic structure of the act is not in itself evil, there still remains, in such a collision of additional circumstances, the possibility of a morally pure act, although one thing or another has to be condoned, which in itself would not be morally acceptable.

Formal co-operation is an innate joint cause of moral evil; working through and toward it, to the extent of its badness, whether through mental absorption or whether by practical co-operation. The act perpetrated by the person himself has an innate, not merely external, causal connection with the other person's evil deed. Consequently, it is bad because of its innate nature and cannot be morally justified by any externally appearing circumstance. In such cases the moral law imposes unqualified obligations, without regard to any personal sacrifices whatever their extent.

The case of purely material co-operation is quite different. The reason for its different evaluation lies, as it were, in the totally different essence of the action which latter remains at least morally indifferent in its basic structure, i.e. in its innate nature and in relation to what is being done. Its connection with the morally evil is of external origin, namely an other person's will and activity. This externally imposed circumstance has also to be considered. Such co-operation is not, simply, morally admissible; nor is it, simply, morally inadmissible. Material co-operation can only become a morally admissible act if there are correspondingly grave reasons for carrying out this act in spite of many drawbacks which have to be accepted. A person's own activity is justified on the one hand by the morally unobjectionable, basic character of that which is being done, and on the other hand, by the fact that by abstaining from the act he would lose or endanger personal values. The fact that the person's own act or performance

is brought into causal connection with another person's morally evil deed, though accompanying unavoidable consequences, is wholly and totally the fault of that other person.

The principle on which the evaluation here is based is uncontested in "moral theology" and is in full correspondence with natural moral sense: "hen from one and the same act both good and bad effects result, the act itself can be so evaluated if it as such is at least morally indifferent, provided that corresponding weighty reasons exist. Anyone who would wish to deny this principle would stand helpless before the complications of daily life; he could, for instance, no longer show the bombardment of cities to be morally justified. - The reasons are correspondingly weighty, however, when they stand in a significant relationship to the deed in which the person's own action causal influence on another person's immoral action. The more intimate, the closer and the more necessary this connection is, the more weighty must likewise be the reasons that are nevertheless to justify the action, ^{exercised} vice versa, and: the looser the causal relationship to the immoral act, the less weighty need the justifying reasons be the nature of the wrong committed always being taken into consideration.

2.) The subjective side;

In a certain sense morality is the most subjective thing there is, inasmuch as moral worth, or moral unworthiness, emanates from the very essence of a person's being from the spiritual forces of actions. For the deed, an act is morally worthy or unworthy insofar as it is recognized and desired as such. It is obvious that many an error can innocently occur without the resulting erroneous departure from the objective norm constituting moral guilt.

But since purely subjective morality is subordinate to the evaluation of the objective guilt in the case at hand, a detailed consideration of the former may be dispensed with. On the other hand, something must still be said concerning the subjective aspect, inasmuch as this is of critical importance for the evaluation of the objective guilt as well.

The possibility of a factual participation which is morally unobjectionable depends definitely on ascertaining whether the act as such is morally indifferent; on the knowledge of the wrong for which the persons own actions are misused; and on the evaluation of the actual, causal effect of what he did on the moral wrongdoing.

For the many problems of life it is hardly surprising that writers on moral theology almost unanimously point out how difficult it sometimes is to come to an unequivocal conclusion on these points, one that is settled beyond all further discussions, and how much must remain reserved here to a conscientious weighing and evaluation of the act. But this also implies that such an evaluation based on a conscientious weighing of factors, must also be recognized as right. In the present case the inherent moral indifference of accepting an SS rank may hardly be doubted. Of more significance is the knowledge of the extent to which the SS was used for crimes at the time the rank was accepted and during the time it was held.

The more sketchy the general knowledge ^{the crimes} of the SS were at that time, the more reason there was for the acceptance of honorary membership. Even more decisive would be one's own realization and judgment of the influence of one's own actions as a motive force for the criminal actions of the SS. The lower this could be counted after conscientious deliberation the more reason there was for joining.

In inevitable decisions the necessary deliberation of all these various motives is generally a very tricky affair. All the more so at a time when systematic delusion and secrecy were at their very worst. It is quite possible that a decision based on careful deliberation was not altogether irreproachable; but this does not mean that the decision was not morally justifiable at the time.

C. Application of the Principles given to the Duesterfisch Case.

In order to fix the point in question may I remind the court briefly that we are concerned here only with Duesterfisch's membership of the SS from a purely moral-theological point of view. - After we have accepted the differentiation of formal and material membership the problem, in a nutshell, is whether the acceptance of honorary membership is to be considered formal or material collaboration.

1) According to the files submitted by the prosecution Duesterfisch is not charged with any criminal action of his own.

Many instances show clearly that Duesterfisch did not take part in criminal actions of the SS as such of his own free will, or make them his sin. - This is borne out by the fact that Duesterfisch exerted his influence to prevent the SS and Party as far as possible from interfering in the works management. - Contrary to the tendencies of the SS Duesterfisch was an active member of the Protestant Church. (Doc. 150) - He put himself out for the foreign workers (Doc. 321, 297). - He endeavored to the best of his ability to rescue political or racial persecutees from the claws of the SS, or to protect them and have them left in their positions. (see Dr. Baumann, Doc. 158, 296, - Dr. Jakobi Doc. 157; - Granel; Doc. 236; - Dr. Scheunberg Doc. 296; - Brunner, Doc. 151; - Dr. Schulz, Doc. 167; - Gipp and Dr. Sanner, Doc. 253; - Dr. v. Weinberg, Doc. 266; - Dr. Ziervogel, Doc. 92; - Feibart, Doc. 89). These actions are obviously contrary to the tendencies of the SS.

The conditions on which Duesterfisch was willing to accept the honorary membership offered to him - obviously in the hope that they would be refused - refusal to pledge himself to absolute obedience, refusal to take the oath and to wear uniform (Doc. 201, 250) were against the basic principles of the SS and made it doubtful whether there still could be any question of real membership.

But on principle, Buetevisch in this manner preserved complete freedom of decision and action, and thus also of his personal responsibility for every personal action. Just how deeply that affected him is shown by his first discussions with Kranefuss in 1944, and his firm request to forward to the Reichsfuehrer his application for cancelling his rank.

As an honorary Fuehrer Buetevisch had no power of command whatsoever, and performed no duties.

Nor could, Buetevisch's action have the affect externally, of approving or of arousing enthusiasm for furthering the aims of the SS, since his belonging to the SS never became apparent externally, and remained almost unknown to his confidants until after the war began (Doc. 137; 219; 145; etc....)

Buetevisch himself looked upon and evaluated his honorary rank as a "pure honor", as an absolute irrelevancy (Doc. 252), as a purely "formal matter" (Doc. 137), as a "disinterested formality" (Doc. 143); these were all things which he did not welcome, but which he could not avoid (Doc. 142).

On the strength of these documents, and under the premise that their weight as evidence is not disqualified, a moral-theological opinion must lead to the conclusion that in no way can any formal co-operation with the criminal activity of the SS be assumed. This also means that the pure belonging to the SS as such, as it may be viewed in the assumption and retention of the honorary membership, may not under any circumstances be construed as behavior contrary to morality.

2.) Hence there remains only the possibility of a cooperation materialis here is meant the concept of co-operating, in the broadest sense of original influence, in any action not permitted by codes of morality. This could be construed as such action only if Buetevisch had allowed himself to be listed as an SS honorary Fuehrer and had not refused to be promoted in his turn. Such material co-operation can be allowed, morally, if there are serious reasons in its favor. This permissibility thus insists upon a certain emergency situation in which every decision, both to engage in or refrain from action, which involves grave danger of injuring one's own or another's interests. It insists, furthermore, that the danger of injury one's self must correspond to the danger per se and the extent to which another's injury is caused.

Buetevisch himself states that he did not welcome all that, but that he could not refuse it (Doc. 142); that he could not withdraw from this association with

Kranofuss in the interests of his professional work, and he hoped to be able to utilize his present contact in order to exert some material influence (Doc. 210). The brusque rejection of the honorary rank intended for him, would, at the very least, have meant the end of his collaboration with Kranofuss (Doc. 2101), since Kranofuss was, according to description, (Doc. 89) an over-sensitive and easily injured person. The sacrifice of his relationship as a colleague of Kranofuss threatened by possible rejection, would simultaneously have meant serious injury to his own work and to that of his colleagues (Doc. 100, 89, 92.)

Therefore important interests of a professional and economic nature were seriously endangered. (cf. doc. 13; 272).

Furthermore a refusal on the part of Bue. would have spoilt the possibility of intervention on behalf of persons involved in the ever increasing number of cases of hardship (doc. 201). Bue. now hoped by reason of his connection to be "better to" or assist persons in difficulties. (Doc. 142). As shown by the defense Kranzmann himself gave him the honorary rank for that reason in order to exclude from the very beginning any objections that might arise in cases of intervention. That others also regarded this matter from that angle is proved by Doc. 92. How important and justified such thoughts were is proved by later events and the quantity of cases necessitating such intervention (see above). Bue., however, also had to reckon with the fact that, in the event of a refusal, his own person would be seriously endangered.

It may not be easy for an outsider to pass a competent judgment on the whole effect of a possible refusal of a rank offered. But it must be admitted that the reasons stated, in the mental atmosphere of the time, did not weigh lightly and could force one rather to accept than to refuse the rank offered, all the more so since it was only a matter of being listed.

.....

It cannot be denied that there is justification for considering such an unimportant and by no means decisive influence on events, as opposed to one's own services disadvantages as correspondingly weighty reasons for joining the SS with a purely honorary rank. That means at the same time that to accept such an honorary rank under the conditions described cannot be condemned as morally not permissible. It is hardly imaginable that an adviser on matters of ^{conscience} had been asked by Bue. for a judgment prior to his own decision, would have been in the position to make it a moral duty for him to refuse the rank offered.

The same reasons which morally permit the acceptance of the honorary rank also justify the retention thereof. They retain their definite weight as long as no significant change in the situation can be proved. In the course of time possibly the reasons altered their specific importance; but that was effective in both directions. It is not apparent that a considerable change took place in their relationship towards each other.

signed: Kraus, Prof.

CERTIFICATE OF TRANSLATION

18 June 1945,

we,

John Fosberry, No. 20 179, and
Verta Kannova, No. 20 151

hereby certify that we are thoroughly conversant with the
English and German languages and that the above is a true
and correct translation of the Closing Brief Deutsch.

John Fosberry,
No. 20 179.

Verta Kannova,
20 151.

CERTIFICATE OF TRANSLATION

11 June 1948

I, John Fosberry, No. 20 179, hereby certify that I am thoroughly conversant with the English and German languages and that the above is a true and correct translation of appendix to the Closing Brief Deutsch.

John FOSBERRY,
No. 20 179.

EXH. I.

Appendix to the Closing Brief

For the Defendant

Dr. Gustafson

Indictment Count I.

Aggressive warfare.

Appendix
to the Closing Brief
For the Defendant Dr. Buchtelisch.

For the convenience of the Tribunal a tabular comparison of the basic evidence of the prosecution and the defense is given on the following pages. This will make it possible to produce quickly the counter evidence of the defense for any document of the prosecution.

The English pages of the transcript for statements of witnesses and defendants are enclosed in parentheses following the German pages. Transcript references immediately following references listed in the same sub-section (Unterfall), need not be separately listed a second time in the relevant sub-section.

The pages of the indictment and the trial brief of the prosecution are given only as printed in the German version.

Alliance with Hitler.

Buo. I.

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Dr. Eustafisch

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Dr. Buettelbach.

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for the Defendant

Dr. Buettelbach

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(Brist)

Case 6
Defense

MILITARY TRIBUNAL VI

Case No. 6

TRIAL BRIEF

for the Defendant Dr. Walter Duerffeld

in Proceedings of

United States of America

against

Karl Krensch, et al (I.G. Farben A.G.)

Nuernberg, 2 June 1946

submitted by

Dr. Alfred Seidl

Counsel for Defense
Attorney at Munich



*
TRIAL BRIEF DUBROFF

I.

The invasion of Bohemia-Moravia by German troops caused the British Government to take up negotiations with the French and Soviet Governments, the objective of which was the forming of an alliance among these 3 great powers, directed against Germany. These negotiations, conducted in Moscow, did not take the expected turn. Even the French and British military commissions that had been sent to Moscow on 11 August 1939, could not surmount the difficulties that had arisen, evidently based on a wide divergence of political views.

It must have been all the more surprising when, on 23 August 1939, the closing of a Non-Aggression Pact between Germany and the USSR was announced. The negotiations that led to the conclusion of this pact were kept strictly secret by the Reich and Soviet Governments and the former British Ambassador in Berlin, Sir Neville Henderson, in his book: "Failure of a Mission", published in 1940, has the following to say with regard to them:

".....on the other hand, the successful conclusion of negotiations between London-Paris and Moscow seemed farther away than ever. It was correct, that the British and French military commissions had packed their bags for a journey to Moscow. When they actually arrived there on 11 August, it would only have been natural to assume that Stalin, even though he wanted to make the most of it for himself, had finally decided on collaborating with the Western powers in some way or other, in order to prevent further German aggressions. Opposing this viewpoint however was the disquieting development, that Moscow quite openly showed its fiendish side and demanded a free hand in the Baltic states

TRIAL BRIEF DR. DIERPFELD

Russia's actual goal thus became known and, since the Reich was secretly interested, the scales balanced heavily in disfavor of the Western powers. They could not barter the honor and liberty of small, but sovereign states, as Germany was doing. One can only hope that some day the question will be cleared up whether Stalin, from the outset and in secret accord with Hitler, intended to drag out negotiations with us until the Reich was ready for attack or whether he played cat and mouse with both, Germany and us. I am inclined to believe the latter. But even I can only offer counsel and furthermore I am biased. From the outset I considered negotiations with Russia as something that had to be attempted, something however that lacked any sense or reality. Never once did I believe that the Russians would give effective and unselfish aid to the Poles. However I was confident that, should Russia decide to join the peace front, even if only halfheartedly, Hitler, in accordance with the principle that caution is the mother of wisdom, would be forced to resort to peaceful negotiations. However I was always of the opinion that it was the primary goal of Moscow to involve Germany in a war with the Western Powers and to survive the conflict between them with the result of general ruin, as the one who had the last ensuring laugh.

Already in the International Military Tribunal, the negotiations conducted between the Soviet and the German Governments in the Summer of 1939 were the subject of legal examination and of evidence offered in court. In the meantime the State Department in Washington published 260 secret documents which, in May 1945, had been captured in Germany by troops of the Western Allies and which concerned German-Soviet relations from 1939 until 1941. The contents of these documents fully confirm the result of evidence offered before the IMT and shows in particular that the initiative for German-Soviet negotiations and for determining the common sphere of interests, agreed upon in a "Secret Supplementary Protocol" of the Non-Aggression Pact, originated from the Soviet Government. The "Secret Supplementary Protocol" is worded as follows:

" Secret Supplementary Protocol "

On the occasion of the signing of the Non-Aggression Pact , between Germany and the Union of the Socialist Soviet Republics , the undersigned plenipotentiaries of both parties discussed the problem of the fixing of the limits of the common fields of interest in Eastern Europe during a highly confidential conference . The conference had the following result :

- 1) In the case of a territorial - political change in the territories belonging to the Baltic States (Finland , Esthonia , Latvia and Lithuania) the Northern Lithuanian border at the same time constitutes the border line of spheres of interest between Germany and USSR. In such a case Lithuania's interest in the Wilna territory is being acknowledged by both parties .
- 2) In the case of a territorial-political change in the territories belonging to the Polish State , the border lines of spheres of interest between Germany and the USSR are roughly fixed by the rivers Narew , Vistula and San . The question whether the keeping up of an independent Polish State is desirable in the interest of both parties and how the borders of that State should be fixed , can find its final answer only in the course of the future political development . In any case , both Governments will settle this question by friendly agreement .
- 3) With regard to the South-East of Europe , the USSR emphasized its interest in Bessarabia . Germany declares that it has absolutely no political interest in this territory .
- 4) This protocol will be treated as a highly confidential matter by both parties .

Moscow , 23 August 1939

For the Government of the Reich

von Ribbentrop

Empowered by the Government of the USSR
W. MOLOTOV

Already in the trial before the International Military Tribunal the defense objected that , at the outbreak of the Second World War in 1939, war in itself did not constitute a violation of international law. Although the signatory powers which concluded the Briand-Kellogg-Pact in 1928 have condemned war as a means of solving international disputes , and renounced it as an instrument of national policy in their mutual relations , none of both these articles

of the pact contain any threat of punishment against individual persons and therefore - since such a threat belongs to the concept of any criminal law - they may not be regarded as criminal law in the legal sense. The same and similar objections were made by the defense in trials before Military Tribunals of the US-Zone Germany.

If one however is of the opinion - and it is the opinion of the prosecution - that Article 6 (a) of the Charter of the International Military Tribunal and Article II, Para.1 of the Control Council Law No.10 are in accord with international law valid at the time of the outbreak of the war in 1939, then there can be no doubt that the contents of the secret supplementary protocol to the Non-Aggression treaty dated 23 August 1939, referred to above, fulfil the specifications set forth in both these penal laws, i.e.: "Planning, preparation, initiation or waging of a war of aggression, agreements or assurances or participation in a Common Plan or Conspiracy for the accomplishment of any of the foregoing." In examining this question, one must not lose sight of the fact that the agreements reached in Moscow during the night of 23/24 August 1939, had been signed a few hours prior to the ordered invasion by German troops and in the face of the concentration of German and Polish armies. In this connection, I shall refer to para. 3 of the judgement of the IMT, where the following is stated:

" on 25 August, Great Britain signed a pact of mutual assistance with Poland, which reinforced the undertaking she had given to Poland earlier in the year. This, coupled with the news of Mussolini's unwillingness to enter the war on Germany's side,

made Hitler hesitate for a moment . The invasion of Poland , which was timed to start on 26 August , was postponed until a further attempt had been made to persuade Great Britain not to intervene . "

However , the activity of the Soviet Government did not limit itself to signing the Non-Aggression Pact and the secret supplementary protocol which formed an essential part of this treaty . It did not hesitate to militarily occupy the territories referred to in the secret supplementary protocol and to incorporate them into the Union of the Socialist Soviet Republics . On 17 September 1939, the Soviet army crossed the Polish border and occupied territories of the Polish State located East of the demarcation line , previously agreed upon . The sole reason why Soviet troops had not occupied Poland sooner , was , that the High Command of the Red Army had not counted with such a quick advance of the German army in Poland and because the assembled Soviet troops were not ready to march . This is evident from the exchange of notes between the Reich Government and the Government of the USSR , forming part of the documents now being published by the State Department .

On 30 November 1939, the armed forces of the Soviet Union commenced with their attack on Finland , after diplomatic relations with Finland had been severed the previous day and the Non-Aggression Treaty concluded with Finland had been terminated by the Soviet Government . As a result of this attack, the Soviet Union , by decision of the Council of the League of Nations dated 14 December 1939 and at the instigation of France and Great Britain, was expelled from the League of Nations for violating obligations imposed by the League of Nations Pact .

On 15 June 1940 , Soviet divisions marched into Lithuania and occupied this country too . Two days later , i.e. on 17 June 1940 , Esthonia and Latvia were occupied . By decision of the Supreme Soviet , dated 3 August 1940 , Lithuania was incorporated into the Union of the Soviet Socialist Republics as the 14th federal republic . The incorporation of Latvia as the 15th federal republic took place by a resolution of the Supreme Soviet dated 5 August 1940 . On 6 August 1940 Esthonia was finally incorporated into the Union of the Soviet Socialist Republics as the 16th federal republic . On 28 June 1940 , Soviet troops commenced the occupation of Bessarabia and the Northern territories of Bukovina which , by decision of the Supreme Soviet of 2 August 1940, were constitutionally absorbed into the Union of the Ukrainian Soviet Republics .

The enumeration of these facts shows that the Government of the USSR, not only concluded agreements as defined by Article 6 (a) of the Charter of the IMT and Article II , Para 1a of Control Council Law No. 10 , but that this Government took measures which fulfil the specifications set forth in Article 6 of the Charter and Article II of Control Council Law No. 10 (compare Article 6 , last para . of the Charter for the IMT) .

In the trial before the International Military Tribunal , the defense has proved these facts and has drawn the legal conclusions resulting from this with regard to the validity of the Charter of the IMT and the jurisdiction of the court . The International Military Tribunal , in its judgement , did not state its opinion with regard to these questions , even though it is obvious that , on the basis of these proven facts ,

the court is deprived of its legal basis . All the more emphasis was lent to the significance of these questions by the public criticism of the judgment of the IMT . In this connection , it suffices to refer to a statement pertaining to the judgement of the IMT which is contained in a discussion in the London " Economist " of 5 October 1946 and part of which reads :

" During the trial the defense lawyer Seidl produced witnesses , including Baron von Weissacker , permanent Secretary of State in the German Foreign Office from 1938 to 1943 , who testified about a secret treaty attached to the Non-Aggression Pact and providing for territorial partition of such European states between Germany and the Soviet Union . The prosecution made no attempt to disprove this evidence ; nevertheless, the judgment completely ignores it . Such silence unfortunately shows that the Nuerenberg Trial is only within certain limits an independent judiciary . In ordinary criminal law it would certainly be a remarkable case if a judge , summing up on a charge of murder , were to avoid mentioning evidence on the part played by an accomplice in the murder because the evidence revealed that the judge himself had been that accomplice . That nobody thinks such reticence extraordinary in the case of Nuerenberg merely demonstrates how far we still really are from anything that can be called a " reign of law " in international affairs . Both Britain and France are on record as having concurred in the expulsion of the Soviet Union from the League of Nations for its unprovoked attack on Finland in 1939 ; this verdict still stands and is not modified by anything which has happened since . In 1939 Moscow openly gloried in military co-operation with Germany for the destruction of Poland , " that ugly offspring of the Versailles Treaty " , and Ribbentrop in his last plea quoted a cable of congratulation from Stalin as proof that the Soviet Union had not then regarded the war against Poland as an aggression . The contrast between 1939 and 1946 is indeed fantastic , and it is too much to expect that either future historians or Germans in the present will not see it "

II.

If one examines the question as to what conclusions can be drawn from the facts mentioned in Par. I of this Trial Brief with regard to the legality of the Charter of the IMT, the Control Council Law No. 10, and the verdict of the IMT, then one has to consider the following:

- a) The Charter of the IMT forms an integral part of the so-called London agreement, which was signed by the Governments of the United States, Great Britain, France and the USSR on 8 August 1945. At the time of the signing of the London Agreement, not only the Soviet Government but also the Governments of Great Britain, and the United States were well acquainted with the course of German-Soviet negotiations and the contents of the Secret Supplementary Protocol dated 23 August 1939. As mentioned earlier, the 260 documents now published by the State Department, had already been captured in May 1945, that is to say before the signing of the London Agreement.
- b) The legal objections resulting from the contents of the above mentioned secret Supplementary Protocol, can only be fully evaluated in connection with another objection of the Defense, which had already been raised in the beginning of the IMT and which was submitted in ⁿuniform statement of all Defense Counsels. Part of this statement reads as follows:

"..... The Defense is finally obliged at this stage to refer to another peculiarity of the proceedings, with which they deviate from the generally recognized principles of modern criminal legal practice: the judges are appointed only by these countries,

Which fought on one side in this war. This one litigant is everything: creator of the constitution of the Tribunal and of the criminal law Standards to be observed, prosecutor and judge. It was hitherto my conviction that this should not be the case, since the United States of America as pioneers of the establishment of international courts and courts of arbitration have always demanded that the judges bench be occupied by neutrals, assisted by representatives of all parties concerned.....".

The facts mentioned in paragraph I of this Trial Brief have shown furthermore, that at least one of the signatory powers

of the London Agreement, dated 8 August 1945, have appeared in the course of the IMT proceedings not only as creator of the constitution of the Tribunal and of the criminal law Standards to be observed, as prosecutor and judge but this signatory power was guilty of complicity in the Common plan, punishable under Article 6 (c) of the Charter. Even during the IMT proceedings it became evident, that two other signatory powers of the London Agreement were acquainted with these facts, before giving their signatures.

- 1) It seems appropriate, when examining legal conclusions, which are the result of the above mentioned facts, to consider them from a historical point of view: The old Germanic, Frankonian and medieval-Germanic law knows, as do other primeval systems of Law a "being judge in one's own case" through its evidence by one-man combat and duel, which occurs independently of the personal position of the affiant and the contestant respectively. In this case evidence is offered not to convince the court of the truth of specific facts by submission of the appropriate material; rather the assertion is no longer subject to objection, once, certain forms proscribed by law have been complied with, and is incontestable, established by process of law.

The court merely decides whether the form has been complied with by the profferer of evidence. Object of the proof here is the party allegation with its legal implications, and not the facts underlying it. The party may confine itself to asserting legal conclusions. In other words: Not he is right who proves the existence of his right to an impartial judge, but establishes it in certain procedural forms against his opponent. This becomes clearly evident in the trial by combat: The victor is right. Defeating the opponent gives right even to him who is himself a criminal. He takes the law into his own hands.

The modern legal conception of civilized nations, by contrast, distinguishes between mere enforcement by compulsion of one's own position and between the proof of one's own claim under law, to an impartial judge. (instead of mere adherence to certain procedural forms). This latter determines right on the basis of objective truth. This is particularly clearly shown in section 244 paragraph 2 of the German Penal Code. Similar regulations apply to criminal law of all modern states. In this connection it is quite obvious, that this judge, if he is an "impartial" judge, must not be a party or even an "accessory to the crime, which he is to judge. Otherwise he is a "iudex in-chilis" a disqualified judge according to the law, whose judgment is an arbitrary act, not a judicial pronouncement under law.

- 3) It follows from such considerations that no man is allowed to judge his own case and under such circumstances, this prohibition, as a matter of course, is a foregone conclusion:

A few examples may explain this:

Already the Roman law knew this principle. A certain ~~Epian~~ phrase is quoted in *Dic. 2, 1, 10* (*de iurisdictione*) which reads as follows:

"Qui iurisdictione praestet, neque sibi ius dicere debet neque uxori vel liberis suis neque libertis vel ceteris, quos secum habet".

This thought recurs in the literature of natural philosophy at the beginning of the modern age. In this connection one has to mention namely S. Bodin *Rep.* pages 491, 734 (Bodin, *Six livres de la république*, 1577 latin 1584); Th. Hobbes, *Leviathan* 78, 116

(Hobbes, *Leviathan*, engl. page 1551, latin page 1668) and S. Pufendorf, *Elementa Jurisprudentiae universalis*, page 459, (published in 1669).

Numerous authors of the 16th, 17th and 18th century who so far had not been mentioned, expressed the same views with regard to this question.

Ample proof is provided by the canon law of the Catholic church.

It may suffice to refer to can. 201, section 2 of *codex iuris canonici* (published 27 May 1917, valid from 19 May 1918) which states:

"Judicialis potestas tam ordinaria quam delegata exerceri aequit in proprium commodum". In this case the iudex becomes a iudex inhabilis, firstly already through the "commodum" (advantage) but even more so by concealing ones own crime.

There are two points from the famous "Commentary on the Constitution of the United States, dated 1787, which are of particular interest in connection with the above mentioned:

"The Federalist" page 54, (Art. I) and page 498 (Art. I XXX)
published by Henry Cabot Lodge, New York and London G.P. Putnam's
Sons (1904) Quote page 54: "No man is allowed to be a judge in his
own cause, because his interest would certainly bias his judgment and,
not improbably, corrupt his integrity. With equal, nay with greater
reason, a body of men are unfit to be both judges and parties at the
same time" (23 November 1787).

And on page 498 it is said:

"No man ought certainly to be a judge in his own cause, or in any cause
in respect to which he has the least interest or bias" (1788). There-
fore the Charter of the United Nations (UN) states in chapter V
(The Security Council) Article 27, paragraph 5: "Decisions of the
Security Council on all other matters need the consent of seven
members including the votes of the permanent members, provided that,
concerning decisions under chapter VI and in accordance with Article
52 paragraph 3, a party to a dispute shall abstain from voting".
We expressly refer to the distinction appearing in the words of
Article 34 "may investigate any 'dispute' or any 'situation'".
This "prohibition against judging one's own case", which thus has
been known since time immemorial, means the prohibition of judging
to one's advantage - from this follows all the more however, the
impropriety of setting up a court of a party, judging and adjudicating
in it a crime

to which this person himself has been a party. Such a party can, under law, never be legislator or judge in such a matter.

- 3) What has been shown here, to have been the trend of history, is evident in the same way from considerations based on the philosophy of law. We start here with Rudolf Stammler's statements in his text book of philosophy of law (3rd edition 1928) dealing with the "Critique of the concept of Law" (page 53 and the following) and particularly with the "inviolability as the indispensable criterion of law" (page 88 and the following). Here we might point out that Rudolf Stammler is among the leading European legal philosophers in modern times.

Stammler bases his considerations on distinction between arbitrariness and law. In this connection he says "the anxiety caused by arbitrary force and abhorrence for it has been evident at all times in social affairs. It is contradistinguished from the will under law". The book then continues verbatim: "Indeed, observing the distinction between arbitrariness and law is very necessary after critical consideration has shown, that both arrogate autocratically binding power of command. Both formulate their pronouncements in such a way, that they contain not merely invitations to those to be bound by them, but that they intend the bond without regard to the consent of the subordinate at any one time. Then the intrusion of arbitrary commands into questions which should be determined under law, has come dangerously close and has often been experienced in history. How then is the idea of law distinguished from the concept of arbitrariness?".

Stammler answers: The criterion is, that in "law" the will "is considered as a unit and to be permanent".(page 91). "The concept of inviolability which distinguishes willing under law, from arbitrariness, implies the exclusion of subjective caprice in any individual case. It is opposed to the idea of a constant bond", under which, "no deviation is permitted from the ordained law according to personal preference in any individual case" (page 92). "The arbitrary command is issued with the idea, that the person giving the order, is not bound to adhere to it himself. "Willing under law" is the exact opposite. It represents the permanent order of humanity.(page 93).

It was necessary to clarify the law, in critical considerations, in its inherent essence. Now the prohibition against "judging one's own case" and the case of one's close relations, becomes at once intelligible: the risk here is so great, that in the case of such "judging", the essence of the law of a permanent order, that is, one equal for all, cannot be maintained. It follows all the more from the essence of the law as here developed, that judging and legislating "under law" in cases of crimes to which the alleged "judge" and "legislator" is himself a party, is inadmissible. Such a judge and legislator would be ordering something to which, retrospectively, "the commanding person was not himself bound". This would be the opposite of law, the opposite of "a permanent order of humanity". It would be a purely arbitrary act.

TRIAL BRIEF HUNTERFELD

To be everything in one person, criminal, legislator and judge, would, "under law", constitute an insoluble and mortal contradiction. If, according to the words of Radbruch Legal Philosophy (3rd edition 1932, page 80) the criminal particularly through his crime often "expresses the fact that the law he violates is recognized", then he does this, not to legalize his position as legislator and judge towards others, but, as it is stated there, to prove all the more that he is "deserving of punishment". Let us summarize: By committing an arbitrary act the criminal can also transgress against his former accomplices and "under the law" he is quite unfit in every respect to set himself up as judge and legislator over them. Such behaviour would therefore actually be null as a legal act.

- 4) Let us return again to the concrete reason for raising this question here, i.e. to the charter of the International Military Tribunal, to Control Council Law No. 10, and to the judgment of the IMT dated 30 September/1 October 1946. The decisive question when judging all Comendant factors is whether the charter of the IMT and Control Council Law No. 10 (COL No. 10) and the judgment of the IMT, according to that which they claim to be, profess to constitute an arbitrary act on the part of the victor or a lawful act. In this respect the documents may be interpreted as constituting either but they are bound by the consequences of the point of view once it has been chosen.

On May 8th 1945 Germany unconditionally surrendered its arms (see publication dated 5 June 1945 of the proclamation of the Control Council No.1) . The creators of the charter of the IMT and Control Council Law No. 10, that is to say the United States of American

the Union of Soviet Socialist Republics, the United Kingdom of Great Britain and Northern Ireland and the French Republic were the victors, and could dictate their conditions to conquered Germany and sit in judgment in the IMT over her subjects. If this were an arbitrary act, then it would be justified by the actual incontestable power.

But do the charter of the IMT, the Control Council Law No. 10 and the judgment of the IMT, and here we are approaching the decisive question, according to that which they claim to be, represent, such an arbitrary act on the part of the victor, or do they want to be a law and judgment under the law? If the latter fact applies, then they are subject to the mature principles of civilized countries (Para. 1, 2 and 3 of this document). For the arbitrariness of the victor can do anything save change a wrong into a right. Whenever an act intended to be legal violates the inviolable maxims of the law, then in this form it is null and void.

Whether the charter of the IMT, Control Council Law No. 10 and the judgment of the IMT dated 1 October 1945 are intended as mere arbitrary acts on the part of the victor, or as legal acts, this question can only be answered by examining them. The following should be considered in this respect:

a) In the case of Control Council Law No. 10, the answer is already directly shown by the words of its preface. According to the latter the law was issued "to create a uniform legal basis in Germany which would render possible the prosecution of war criminals and other offenders of this kind. In this connection the words of Murray C. Bernays are ^{of} utmost significance particularly for the position of the USA government.

According to him, the American government, before they participated in the trial would first have to satisfy themselves that they should truly be doing justice "that we should truly be doing justice".

- b) The same applies to the IMT charter. Its contents also prove that an act of justice was to be created through its medium.
- c) In the same way there can be no doubt that the judgment of the IMT dated 30 September/1 October 1946 in the major Nuremberg trial, was intended as a true judgment according to law, and not a mere arbitrary act on the part of the victor. The entire procedure based on the charter, as also the) "judgment" itself incontrovertibly prove this fact.
- d) It is therefore clearly evident that the IMT charter, Control Council Law No. 10, and the judgment of the IMT dated October 1946 were intended as legal acts. Consequently they should and must be judged according to legal maxims, and therefore are subject to mature principles. They are void in so far as they contradict the latter.
- 5) At first sight it may appear strange, that in our argumentation we more or less mentioned in one breath "to be judge of one's own case", participation by the accessory to the crime in the judging of his former accomplice, and the legislative issuing of a law, facilitating prosecution of this kind, and subjected all 3 matters without further preliminary to the same legal regulations examinations. At first it could be assumed that in this way distinctly varying factors had been dealt with indiscriminately. But this objection actually has no foundations.

For:

- a) The "extra legality" of the act determining its nullity does not hinge upon the form of the act. It includes to the same extent, the activity of the judge judging his own case or that of his accomplice under the guise of law, or that of the role of legislator under the guise of law.
- b) This "extra legality" derives from the substance of the act, and therefore covers any form of such activity which in truth is contrary to law.
- c) The alleged objections therefore do not prevail.

aa) "To be judge in one's own case" can be clearly and sharply defined, and to all extents and purposes may be eliminated without misgivings from the sphere of law. In this respect everyone will agree that the judge becomes a *Index inhabilis*. For instance Paragraph 22 No. 1-3 of the German Code of Criminal Procedure clearly recognized this fact.

bb) More problematic at first appears the prohibition of judging where the judge himself is "criminally incriminated". The German Code of Criminal Procedure also does not mention this case as a ground for exclusion. Indeed should a judge, who himself has engaged in black marketeering, be unfit (*inhabilis*) to judge the black marketing activities of others?

In this connection a part of the judgment of the IMT was very aptly pointed out, in which in an analogous case nothing less was inferred than "that a violation of international law may not be prosecuted if the former enemy states, be it only even in the case of an ally of Germany similarly violated international law".

But we do not even go that far. We only maintain, that a "judge" under law cannot try a specific case which occurred in the past if he
cc) himself participated in it. Exactly the same applies to the legislator. Also he is to the same extent legislator inhabilis, as the judge under law would be a Judex inhabilis. Here again it is not by comparison the case that for example a black marketeer would not be authorized to issue a law against black marketeering. But, under law he cannot be a legislator concerning a concrete specific crime occurring in the past, in which he himself participated as accomplice, and concerning which he would now decide that another perpetrator of the act should be criminally prosecuted without he himself being exposed to criminal prosecution in the same manner. Also a procedure of this kind would be a mockery of every law, and therefore under law would be null. This and only this is the issue here.

III.

The application of the nature legal maxims set forth in Para. II of this document to the circumstances of the case described under para. I has the following

Result:

- 1) By virtue of his prerogatives the victor may avail himself of such measures towards the vanquished, even in the case of such acts in which he himself was involved either way.
- 2) However, for "crimes" committed by the conquered in which he himself participated as participant the victor under law may,
 - a) neither establish a court as legislator
 - b) nor act as judge in such a court.
- 3) Acts which are contrary to this principle (2a, b) are null under law.
- 4) Null in this sense are therefore
 - a) The London Agreement dated 8 August 1945, and the charter of the IMT which forms an integral part of this agreement insofar as under participation of the Soviet Union (General I.T. Mikitchenko and A. Trainin) in Article 6 (a) of the charter, it ordered the prosecution of crimes against peace on the basis of the invasion of Poland in Fall 1939, and the war of aggression against this nation.
 - b) Control Council Law No. 10 based on the London Agreement dated 8 August 1945 insofar as under participation of the Soviet Union

TRIAL BRIEF DR. DUBREUIL

Para 1a, prosecution
(Marshall Zhukov) in Article II/ of crimes against peace on
the basis of the actions just mentioned are authorized and
c) the judgment of the IMT dated 30 September/1 October 1946
in the major Nuremberg trial insofar as under participation
of judges from the USSR (General Nikitchenko and Lt. Colonel -
Voltechkov) defendants were convicted for these crimes.

- 5) Moreover, the question whether and to what extent this partial nullity
applies also to the nullity of the charter of the IMT, Control
Council Law No 10 and the judgment of the IMT dated 30 September/1 October
1946 is not being discussed here.

TRIAL BRIEF DR. DUERRFELD

CERTIFICATE OF TRANSLATION

17 June 1948

We, the undersigned herewith certify that we are duly appointed translators for the German and English languages and that the above is a true and correct translation of the Trial Brief Dr. Duerrfeld.

Pages: 1-7

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MILITARY - TRIBUNAL 6

Case No. 6

CLOSING BRIEF

for the defendant, Dr. Walther Duerrfeld

in the trial

the United States of America

VERSUS

Karl Krauch et al (I. G. - Farbenindustrie A.G.)

Line 1 after quotations means section

*Haftling is by the different interpreters
translated as*

internee, inmate or prisoner

Nuernberg, 4 June 1948

submitted by the defense counsel

Dr. Alfred Seidl

Attorney at Law in Nuernberg



*Letters from Vienna continued
no questions involved*

Dr. Alfred Seidl
Defense Counsel for Dr. Duerrfeld
Case 6

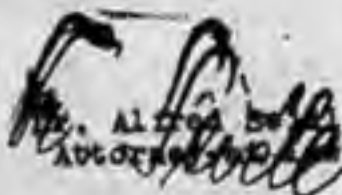
Nuernberg, 6 July 1948

To

Military Tribunal VI

Subject: Closing-brief for defendant Dr. Duerrfeld
in case 6

I beg to hand over herewith 6 corrected
copies of translations of my closing-brief for the
defendant Dr. Duerrfeld.


Dr. Alfred Seidl
Attorney at Law

Closing brief Duerrfeld

Table of contents for the closing brief

for the defendant Dr. Ing. Walther Duerrfeld.

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I n t r o d u c t i o n :

The theory of the prosecution and the theory of the defense applied to the case of the defendant Dr. Duerrfeld. Preview of the following essay of the defense.

In its preparatory essay of 12 December 1947, in the introduction on page 2, the prosecution listed the charges brought against all the defendants. It charges the defendant Dr. Duerrfeld in the following counts of the indictment:

Count 1: Committing crimes against peace, participation in the unleashing and conduct of aggressive wars and invasions of foreign countries.

Count 2: Committing war crimes and crimes against humanity with respect to plunder and spoliation of public and private property.

Count 3: Committing of war crimes and crimes against humanity insofar as they pertain to enslavement and deportation for compulsory labor of civilian populations of countries and territories under the military occupation and domination of Germany, enslavement of concentration camp inmates, utilization of prisoners of war and mistreatment and murder of enslaved persons.

Count 5: Crimes of Conspiracy.

In support of the indictment the prosecution

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eluded that the defendant Dr. D u e r r f o l d held a correspondingly high position in I. G. Farben, in the German economy and in the Party. In the examination of the defendant, however, (Examination Dr. Duerrfeld of 15 April 1948, Transcript En. p. 11542/46 and E. p. 11546/46) the defense showed in detail his relatively unimportant professional position within I. G. Farben and his wholly unimportant one within the economy, and, furthermore, proved that the defendant had no rank at all within the Party. This is also revealed by the affidavit of the defendant submitted in evidence by the prosecution (Pros. Exh. 287 NI 9271, Vol 11, E. p. 28). The prosecution did not produce the slightest proof with regard to counts 1, 2 and 5 of the indictment. For this reason, the defense can dispense with going into those counts of the indictment more thoroughly and calls attention merely to the perfectly clear and irrefutable examination of the defendant (Examination Dr. Duerrfeld of 15 April 1948, Transcript E.p. 11554).

With regard to Count 3 of the indictment, the prosecution did not produce any evidence with which it could prove the participation of the defendant Dr. Duerrfeld in the procurement of civilian forced laborers. It did not even make the claim that the defendant was criminally responsible for illegally employing prisoners of war. The evidence actually submitted by the prosecution covers in count 3 - insofar as this can be applied at all in particular to the defendant Dr. D u e r r f o l d

a) the procurement of prisoners

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- b) the employment of the prisoners in the I. G. Farben plant Auschwitz as such and,
- c) the treatment of these prisoners and the prisoners of war and foreign workers on the building site of the plant of the I. G. Farbenindustrie being built at Auschwitz.

As may be seen from the trial Brief of the prosecution of 12 December 1947, Part 3, German p. 88, 92, 95, 37 and 102, the theory of the prosecution is as follows:

- A. The IG-Farbenindustrie took the initiative for the choice of the construction site for the plant Auschwitz with respect to the use of concentration camp prisoners in the construction.
- B. It took the initiative in obtaining the prisoners and during the construction insisted on having larger and larger numbers of prisoners put at its disposal.
- C. The conditions under which prisoners and other workers had to work at the I. G. Farben building site were inhumane.
- D. The prisoners who were no longer capable of working on the construction of the I. G. Farben plant were sent to the gas chambers, and the slave-driving methods the defendants resulted in the extermination of thousands of prisoners who were no longer capable of working.
- E. I. G. Farben knew about the mass gassing and extermination of people in the concentration camp Auschwitz.

In contrast to this, the defense of the defendant Dr. D u e r r f e l d has developed the following theory:

Ad A: The building site for the plant Auschwitz was not

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chosen with respect to the use of concentration camp prisoners but for purely technical reasons. This will be proved by the defense counsel of the defendant Ambros. Moreover, the construction site had long been decided upon when the defendant Dr. D u e r r f e l d was assigned to Auschwitz.

Ad B: The initiative for the use of prisoners in the plant Auschwitz was originally taken by Goering (Goering Decree dated 26 February 1941). The order was to apply for the entire period of construction. Employment Office, Administration of the concentration camp Auschwitz and the Building Management of the I. G. Farbenindustrie acted, therefore, in order to carry out an order of a supreme Reich office and could not avoid this order.

Ad C: For the treatment of the prisoners on the building site and in the camp, the administration of the concentration camp Auschwitz and/or the labor camp of the SS at the I. G. Farben plant, thus an SS office, is exclusively responsible. By no means does the defense wish to exonerate or even to defend the methods of treatment of the SS offices of the concentration camp, which were particularly shameful in the beginning. It will prove, however, that I. G. Farben, and in particular the defendant D u e r r f e l d, continually improved the living and working conditions for the prisoners in the I. G. Farben plant at personal risk in an energetic, ~~stubborn~~ *tenacious* and persevering fight, to such an extent that there can be no question of inhumane treatment on the part of the defendant

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Dr. D u e r r f e l d, of negligence or even of indifference, but the exact opposite must be found.

Ad D: The defense believes to have proved that slave-driving methods by the I. G. Farben plant were neither ordered nor tolerated, that as a result on the basis of the work in the plant, the health of no prisoner could have been injured and that as a result neither I. G. Farben nor least of all the defendant Dr. D u e r r f e l d could have been responsible if the camp management of the labor camp at the I. G. Farben plant really did transfer persons incapable of work to the Birkenau camp with the intention of destroying them.

Ad E: The concentration camp Auschwitz was surrounded with an iron curtain until the plant and the camp were evacuated, so that beyond the emergence of sporadic and uncontrollable rumors, in particular among the lower levels of the plant employees, the defendant Dr. D u e r r f e l d could not have known of the events in the concentration camp Auschwitz.

The contrast of the theories of the prosecution and of the defense shows that the prosecution accuses I. G. Farben, and thereby the defendant Dr. D u e r r f e l d as well, of actions for which neither I. G. Farben, nor especially Dr. D u e r r f e l d had any sort of jurisdiction. In order to prove this in particular, the defense will clearly show the actual position of the defendant in its Section I and show his actual responsibility in all respects.

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In section II, which follows, it will be proved that no initiative was taken by the defendant Dr. Duerrfeld in any case in the employing of prisoners. Here, the defense clearly proves from the 6 documents from this period pertaining to this submitted by the prosecution, and from the case in chief of the defense, that ~~on the contrary~~ the allocation of prisoners was ordered by a supreme Reich office, that this order came to the defendant via official channels, and that the latter, therefore, finding himself to be in a wartime state of emergency, acted upon order.

Section III of the present arguments is concerned with the so-called Camp IV, that is, the labor camp, in which those prisoners employed in the plant were accommodated. It is concerned with the history and the character of the camp and the spheres of jurisdiction in the camp. The defense could pass over this entire series of questions and content itself with proving that the defendant did not have the slightest jurisdiction in this camp which was subordinate to the SS and that as a result he also did not have to bear any responsibility for it. However, the prosecution has introduced such extensive evidence regarding the internal conditions in this SS labor camp that the defense considers it necessary to reduce the descriptions of former prisoners given in numerous affidavits to the facts insofar as they are known today to the defense. In its Section IV, the defense is concerned with the working and living conditions of the prisoners, the prisoners of war and the foreign workers on the building site

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and in the plant which was being constructed. The prosecution supports its claims mainly by 43 affidavits and 18 pieces of evidence with misunderstood excerpts from the weekly reports of the construction management during the period of construction. The defendant Dr. D u e r r f e l d does not dispute the fact that from a certain period on, about October 1942, he was locally responsible for the welfare of the workers of I. G. Farben. Therefore, the focus of the defense of the defendant Dr. D u e r r f e l d is also in this Section IV. The defense is able to refute the affidavits by prosecution witnesses which are composed of inaccuracies, exaggerations and false claims, with an oppressively overwhelming amount of evidence. Quite apart from the fact that the prosecution does not personally charge the defendant Dr. D u e r r f e l d with any kind of criminal or even only inhumane action, the defense of the defendant Duerrfeld in the interests of the entire defense and of the reputation of I. G. Farben, unchallenged until now, as one of the most socially-minded big businesses, has considered it worthwhile to present matters so clearly that not even the slightest doubt can remain of the social and humane attitude of the plant management of the I. G. Farben plant Auschwitz.

In Section V, the defense takes up the alleged connection of I. G. Farben with the horrors in concentration camp Auschwitz known today to all the world. Here too, the prosecution did not directly claim a personal guilt on the part of the defendant Dr. D u e r r f e l d . But the prosecution made use of the really tragic similarity of

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the name of the plant and of that notorious place of horror to make the most monstrous accusation, the connecting I. G. Farben with these events in the concentration camp. That is probably also the real reason why the defendant Dr. Duerrfeld, as one among many hundreds of plant managers who had to employ prisoners in their plants, was placed under indictment. In the interest of an historical clarification, therefore, the defense has clearly shown in this Section V that not the slightest internal connection existed in practice between the concentration camp and I. G. Farben, two groups which were poles apart in their ideology. How greatly the I. G. Farben, ideology in particular of the I. G. Farben plant Auschwitz and its responsible manager in the last two years of construction, Duerrfeld, differed in its social attitude from that of the concentration camp administration will be shown by Section VI in a few examples. Finally, it will be demonstrated in the closing section VII how the whole makeup of the defendant Dr. Duerrfeld, this engineer and person characterized by so many witnesses as irreproachable and unimpeachable, must be far removed from the criminal affairs of this unholy concentration camp.

I. The professional position of the Defendant and the limits

of his Responsibility.

A. Dr. Duerrfeld's position in I. G. Farben, the party and
the Economy, and as Commissioner of the Göttingen Professor

Dr. Krauch.

In describing the actual position of the defen-

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dant Dr. Duerrfeld, the defense refers to the Affidavit Duerrfeld (Pros. Exh. 287 NI 9271 vol. 11, E. p. 28) and the examination of the defendant on the witness stand (Examination of 15 April 1948, E. p. 11546 - 48). From this it may be seen that until he was put in charge of the planning and the assembly work in the I. G. Farben plant Auschwitz (1941), the defendant was only an Oberingenieur of the Leuna plants, and that not until 1941 was he appointed Prokurist of the I. G. Farbenindustrie. In April 1944, he became "Prokurist with the title Director", of whom there were about 120 officials of the same rank in the I. G. Farbenindustrie. From this it may be seen that there can be no question of the defendant's holding a leading position within I. G. Farben. This should be all the more clear if one considers that he was neither a member of the Vorstand, the Beirat of the enterprise, the Tako, or of other committees of any sort of the I. G. Farben, nor did he participate in the so-called plantmanager discussions, not even after April 1944 when, simultaneously with the appointment to titular director, he was temporarily entrusted with the management of the plant in Auschwitz until a chief should be appointed as the permanent plant manager of the Auschwitz plant. (Examination of Dr. Duerrfeld of 15 April 1948, German p. 11782/83, E. p. 11547/49 and G. p. 11789, Examination Dr. Schneider of 20 February 1948 G. p. 7500 and 7504, E.p. 7440 and 7446).

From the turn of the year 1938/39 on, the defendant was commissioned by the Gubechen Prof. Krauch as commissioner for the hydrogenation plants Poelitz, and from 1943 in the same function for the I. G. plant Auschwitz. (Examination Dr. Duerrfeld

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of 15 April 1948 G. p. 11785/87, E. p. 11551/52.)

It may be seen from the case in chief that no authority to give directives of any sort was issued with this appointment.

The tasks of a so-called commissioner were much more those of a trustee for the Gebecken, who for his part was himself a trustee for the Reich Ministry of the Economy and other offices. These duties of a commissioner were thus essentially duties of coordination and synchronization and consisted mainly in directing partial orders and orders for machines and material to the right place and at the right time necessary in each case. By no means did such a commissioner have the authority to issue orders in the field of labor allocation. Naturally, a commissioner of this sort, as in this case the defendant Dr. D u e r r f e l d for the I. G. Farben plant Auschwitz, had the assignment of putting the plant in his care in operation as soon as possible. "This is because we were at w.r.," stated the Gebecken Prof. Krauch himself on the witness stand with regard to this. (Examination of Prof. Krauch of 18. January 1948, G. p. 5417, E. p. 5387/88). During the year 1944, this commissioner office was extended to those places of production which were directly connected with the Auschwitz plant in technical matters of production, in order, for example, to guarantee that an overland power plant outside the plant would make the current available to the plant Auschwitz at the right time. The functions of the defendant Dr. D u e r r f e l d with regard to this "work sphere Auschwitz" were the same as those of a commissioner in general, again without any authority to issue orders, as was stated above (Affidavit)

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Dr. Ritter, Due. Exh. 124, Due. Doc. 1043, Book 14, p. 36, No. 2 and Affidavit of Falbert, Due. Exh. 123, Due. Doc. 1079, Book 14, p. 34).

Since two basic productions were to be developed side by side in the plant which was to be constructed at Auschwitz, namely one from the field of hydrocarbon synthesis, which originated at Leuna (Sparte I) and one in the field of the production of Buna for which Sparte II, I. G. Farben basic plant Ludwigshafen, had the jurisdiction, the defendant Dr. Duerrfeld had 2 superiors from the time of his appointment as Ingenieur for the entire plant. These were Dr. Buestefisch for Sparte I and Dr. Ambros for Sparte II. To these men, the defendant Dr. Duerrfeld was responsible for his professional activities. They were constantly informed or kept informed by reports from the defendant Dr. Duerrfeld. Both of the above-named men represented the plant in the Vorstand. If proof is still needed for the relatively unimportant position of the defendant Dr. Duerrfeld in I. G. Farben, the fact should be pointed out that his total net income amounted to a maximum of approximately \$600 - \$700 per month. (Examination of Dr. Duerrfeld of 15 April 1948, G. p. 11777, E. p. 11543).

For the sake of completeness, let me further point out that no increased activities on the part of the defendant or even influence on the economy were connected, with his appointment as District Adviser (Bezirksobmann) of the Economic Group Chemical Industry at about the end of 1943 or the beginning of 1944, since practically speaking he did not become active in this function, but his appointment, without being asked, was one of those superfluous measures

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at a time when everything was being over-organized in Germany.
(Examination of Dr. Duerrfeld of 15 April 1948, G. p. 11787,
E. p. 11552).

With reference to the high political position within the
Party alleged by the prosecution, the defense likewise calls
attention to the direct examination of the defendant (of
examination Dr. Duerrfeld of 15 April 1948, G. p. 11782, E.p.
11543/47). From this, as well as from the affidavit he made
for the prosecution, it may be seen that Dr. D u e r r f e l d
had neither office nor rank in the party, and only as a glider
pilot and gliding instructor of long standing did he become a
member of the Party and later NSFK-Hauptsturmfuhrer at a time
when all sport organizations were included in and taken over by
the system of the National Socialist affiliated organizations.

B. Time limits for the responsibility of the defendant for the
construction site of I. G. Farben in Auschwitz.

The prosecution has characterized the defendant Dr. D u e r r -
feld in various places as a plant manager from the year 1941 on.
In contradiction to this, the defense calls attention to the
letter of the co-defendant Dr. Ambros to the late Dr. von Staden,
dated 15 March 1941, which the defense has introduced as Doc.
Exh. 125, Doc. Doc. 1450, in the supplement. From this letter,
as well as from the direct examination of the defendant (Exami-
nation Dr. Duerrfeld of 15 April 1948, G. p. 11790/91, E. p.
11556/57), it may be clearly seen that Dr. D u e r r f e l d was
not entrusted for the first time with an assignment for the I. G.
Farben plant until between the 5th and the 10th of March 1941.

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His assignment was the planning and the assembling of the synthesis installation planned by Leuna, and moreover, he had to take a responsible part in seeing to the water and power supply in the railroad and communications installations, etc, for the entire plant, including the manufacture of Buna. In the period from March 1941 to October 1942, the greater part of his activity was in Leuna. During this time the responsible construction engineer of the construction site was at first Bauingenieur Murr, ordered there from I. G. Ludwigshafen (from March 41 to August 41), and after him, Oberingenieur Max Faust (From August 1941 on). From October 1942, the bulk of Dr. Duerrfeld's activities was shifted from Leuna to Auschwitz, so that not until this time on could he have been regarded as the responsible local construction and assembling head of the I. G. Farben plant. One may assume that he thereby also - even with a time limitation - took over the functions of a plant manager as defined by the National Labor Relation law. The setting up of a ~~shop steward~~ ^{confidential} council would also lead to this conclusion. From this time on, he was also given the responsibility for the welfare of the workers employed directly at the I. G. Farbenindustrie, as defined by law (Examination of Dr. Duerrfeld 15 April 48, G.p. 11769, 11776, 11783-85, 11804, E.p. 11536-37, 11542/43, 11549/51, 11569. Affidavit Dr. Sauer Due. Exh. 341, Due. Doc. 1234, Book 14, page 2).

Actually, the defendant Dr. Duerrfeld was not appointed to nor slated for the position of plant manager until the plant was evacuated, since according to an old I. G. Farben tradition a chemist was supposed to head the plant.

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(Examination Dr. Duerrfeld of 15 April 48, Trans. G. p. 11784	
of	E. p. 11550
" Chr. Schneider " 20 Feb. 48, "	G. p. 7504
	E. p. 7444
" Dr. Ambros " 1 March 48 "	G. p. 8209
	E. p. 8135
" Dr. Braus " 12 March 48, "	G. p. 9093
	E. p. 8998

The defense places great value on the time limits of the activities of the defendant Dr. Duerrfeld in Auschwitz itself and on his responsibility, because the prosecution has submitted extensive evidence from the period before October 1942, thus from a period in which the defendant was not yet even in Auschwitz (with the exception of brief temporary visits to the construction site during which time he did not manage the construction site in any way and therefore could not be locally responsible for it.

C. Limits of the responsibility of the defendant with regard to the construction conferences.

During almost the entire period of construction, thus from April 1941 to the spring of 1944, there were regular construction conferences, in which all the questions essential to the construction of the plant were discussed and decided upon. The construction conferences were the instrument of management for the men of the Vorstand having jurisdiction over the plant Auschwitz and convened 26 times in all. Their guiding lights were the competent members of the Vorstand, Dr. Ambros and Dr. Bueteffisch. Dr. Ambros attended 25 of these 26 construction conferences Dr. Bueteffisch a few. The latter had Dr. von Staden and later Dr. Giessen represent him at these. Besides the above-named men, a great number

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of leading engineers and chemists of the base plants Ludwigshafen and Leuna and other experts took part. Before this large board, all important problems of the construction site and of the plant were discussed and decided upon. From this board, construction Chief Faust and the defendant Dr. Duerrfeld as well as the other leading functionaries of the Auschwitz plant received their orders.

Minutes were taken of these construction conferences by the youngest engineer, Obering. Heidebrook, which were sent to all persons participating and to the TEA office as construction conference minutes. In this way, all the men in the base plants important for managing or advising of the plant were informed about the most important decisions with regard to the plant Auschwitz.

(Examination Dr. Duerrfeld of 19 April 48, Trans. G.p. 12013-15
E.p. 11784/85

" " " " 15 April 48, " G.p. 11791-93
E.p. 11556/58

" " " " 15 April 48 " G.p. 11808
E.p. 11574

" " Braus " 11 March 48 " G.p. 9069
E.p. 8975

" " Bueterisch " 9 March 48 " G.p. 8857
8862, 8867
E.p. 8777,
8781, 8786

" " Struss " 5 May 48 " G.p. 13767
E.p. 13576/77

Affidavit Heidebrook Due. Exh. 140, Due. Doc. 1189, Book 14,
p. 48, No. 2).

D. Limits of the personal responsibility of the defendant

with regard to the personal responsibility of his co-workers
and subordinates.

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The defendant Dr. D u e r r f e l d had a large staff of firstclass co-workers at his disposal during his activity as head of construction and assembly of the I. G. Farben plant Auschwitz from October 1942 on and later as the

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plant leader appointed until further notice (from April 1944). In the selection of persons for the higher positions of the construction site and the plant, the defendant Dr. D u e r r f e l d had no direct influence. The top level of important men of I. G. Farben on the construction site of the plant, i. e., 15 - 20 of the top engineers, chemists and businessmen were appointed by the men of the Vorstand and/or at the construction conference. There is no doubt about it, however, that the selection of those men took place with the greatest care, and that therefore the defendant Dr. D u e r r f e l d could absolutely rely upon his co-workers. On the witness stand (Examination Dr. Duerrfeld of 16 April 48, Trans. G. p. 11863 - 64, E. p. 11653/54 and G. p. 11867, E.p. 11657) he went into detail about the qualifications and the long-term service with I. G. Farben of his immediate fellow workers. Thus, the defendant had no reason whatsoever to doubt the efficiency of this fellow workers, all the more so as the defendant Dr. D u e r r f e l d also fulfilled his supervisor duties by taking a relatively unusually long time in the midst of his constantly difficult professional duties for checking the construction site and the plant social welfare facilities, and thereby for checking the work of his assistant. In order to define the limits of responsibility for the individual areas of work within the plant, for the sake of completeness let me point out that for the following special fields, which are under discussion in this case in chief, the men named in the following were fully responsible.

Closter Dr. Overfeld

for:

Production of same and allied products	Director
Production of mechanical and other synthetic products	Director
	Dr. Bruns

Construction and repair including supervision over Contractors and management of the Construction Division of the A.G.I. 3	Dr. Ing. Faust
--	----------------

In charge of Social Security Division, enforcement of laws or from the employment office including care and clothing, pay, recreation and

disciplinary matters of I.G. employees, and all of the Trade Office of work (Arbeitsamt) and the employment office

Dr. Hossbach

Within the Social Security Division:

Care for the disabled and handicapped persons and liaison with the employment office and the care of the disabled, including the care of the disabled in charge of administrative Division 2 and the Transportation and Shipping Department and the entering establishments (including the care of the disabled) in charge of the Trade Office and the care of the disabled in all national

questions

Dr. Hossbach,
1 for Dr. Wacker

Functions of the Counter-Intelligence Division,

In charge of the Police and the care of the disabled, Dr. Hossbach of the Reserve, Hossbach

Assistant and the care of the disabled and the care of the disabled

Trade Supervisor, authorities

Dr. Hossbach,
1 for Dr. Wacker
Dr. Hossbach

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Cloak and Dagger

Examination Dr. D. D. D. of 15

April 1943, Transcript, G.P. 11806, 11807,
11877, 11837, 11808, 11891, S.P. 11850,
11860, 11865, 11876, 11877).

To clarify the activity of the various and co-workers of the defendants, the defense refers in particular to the organizational plan of the ... was introduced in court as ... Dec. 1943. Furthermore, particular attention is called to the fact that the Building and Construction ...

... appointed one person for contact and negotiations with all branch offices, authorities, organizations, and other officials. I never to guarantee the continuity of certain methods and avoid unnecessary overwork. Thus, for instance as was mentioned above, when Dr. Dierfeld was the Liaison man to the Management Committee of the English prisoner-of-war enclosures and he had to decide on his own account all questions coming up, unless he felt it necessary to request in specific instances a decision from his superiors, while Dr. Hoesbach was the regional Liaison to the Trustees of Work for Upper Silesia and the Regional Employment Office, in questions concerning labor allocations, and finally the Chief of Labor allocation within the construction department a certain Dipl. Ing. Friese, or for his deputy Dipl. Ing. Fischer was the responsible official and for all negotiations concerning the allocation of prisoners. (Interrogation Dr. Dierfeld of 12 April 1948, Transcript G.P. 11951, R.F. 11738).

The defense calls attention to a further point of the case in chief: All those labor questions which went beyond the actual authority of the individual sections or department chiefs of the I.G. Farben were discussed initially in the so-called Department Chiefs Meetings which were held once a week. The decisions were decided in these Department Chiefs Meetings after consultation with the specific special advisors. In some cases a decision within the unit was altogether possible. Questions requiring a higher level decision were referred for a decision to the respective superiors in the various fields, these questions could be called to Dr. von Stutter.

or Dr. Basterfeld, questions concerning the production of methanol to Dr. Gocken, engineering problems to Dr. Sauer, questions concerning the production of acid as well as other general questions to Dr. Ambros, and the relations in between the construction questions either in writing or also occasionally orally. (Examination Dr. Ambros of 12 March 1948, Trans. Germ. F. 9022, Am. F. 3887/98; examination Dr. Duerrfeld of 12 April 1948, Trans. Germ. F. 9022/98, Am. F. 11590/98).

The organization of the masses and all matters pertaining to food were handled by an old food plant by name of Reinhold, who was under the supervision of Herr Dr. Sabelsberg. (Affidavit Reinhold, Que. Exh. 40, Dep. 39, Vol. 2, P. 5-11).

The listing of complete lists of the defendant's co-workers shall yet be supplied by a special reference to the personality of the construction superintendent ^{Faust}. This gentleman was not only from August 1941 until October 1942 in charge of the entire construction site but remained the administrative construction superintendent within the Reich and Construction Administration until the plant was evacuated. As such he edited and submitted the so-called weekly Reports from which both the prosecution and the defense have introduced excerpts as evidence. As to the character of these Weekly Reports statements were made by the defendant Dr. Ambros and Dr. Duerrfeld, as well as by the Chief Engineer of the entire Synthetic Division of the plant, Director Dr. Braus, and by the construction superintendent, Oberbaurat Faust, on the witness stand (Examination Dr. Duerrfeld of 12/4/48, Tr. Germ. F. 10015/16, Am. F. 11730; See also Dr. Ambros of 27 February 1948 Germ. F. 7943, Am. F. 7866;

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Closure Brief Duerffeld

Examination Dr. Braun of 11 March 1948, Tr. n. Ger. P.

507-1, ex-1. P. 8178.

To sum up, the following can be said as a result of the case in chief with regard to the delimitation of competencies between the defendant on the one hand and his co-workers and sub-ordinates on the other:

1.) None of the leading officials of the I.G. Farben plant at Auschwitz were appointed by the defendant but by higher level officials.

2.) These co-workers were chosen after careful selection and there was never any reason to doubt the loyalty of these co-workers.

3.) There was a clear and clear separation of competencies between all officials of the I.G. Farben and the defendant exercised all supervisory duties at all the necessary steps.

4.) All essential decisions within the plant were jointly discussed and reached at the Departments Chiefs' meetings in which the right highest officials of the plant participated regularly. Whenever special security questions were discussed the shop attendants ^(Befehlshaber aus) were also consulted.

5. Delimitation of Competencies between the I.G. Farben and the Building Construction Firms working at the Plant.
The I.G. Farben took a technical interest in the construction ^{firm} ~~plant~~. The construction of the plant therefore was not carried out by the I.G. Farben itself, but a great number of sub-contracts were placed with the building contractors, the ~~building~~ firms and construction firms.

Due to this arrangement, more than 250 firms were continuously working side by side in the Auschwitz Plant. The total number of firms participating in the construction probably was even larger as they relieved each other and since very many smaller firms were associated as co-operatives but were considered as one construction part or as one firm by the I.G. Farben Plant Auschwitz. (D.S. No. 100, D.S. Doc. 1410, Vol. 17, P. 55-57)

It is in the nature of the construction of such a plant that in the beginning only contractors worked at the construction site and that the builder, in this case the I.G. Farben, does not maintain any personnel on the site. The case in chief has proven that also in the case of the construction of the Auschwitz Plant only building contractors were working there in the beginning and that only at a later stage the I.G. Farben became necessary, it formed its own shops and sub-plants especially social welfare establishments for all employees and became itself a "plant" and employed itself personnel in increasing numbers. The evidence on hand shows that in 1941 nearly 100% of all employees were members of the various contractors and that at the end of 1944, that is shortly before the evacuation of the plant, the total employed force of 30,000 was made up of 30% of persons employed by the I.G. Farben and the rest belonged to the approximately 250 building and construction firms. It is apparent from this fact that on the construction site of the I.G. Farben Plant Auschwitz there were more than 250 plant leaders within the meaning of the "Law concerning the Organization of National

believes it can use Exh. 1925 and 1926 (AI 14509 and AI 14495) as a basis for its charges the defense must state that obviously an regulated management of the "Labor Allocation Office of the I.G. Farben Construction Management" made it necessary to instruct the building contractors from a central office uniformly as to the administrative procedure in the allocation of prisoners and to carry out a centralized accounting for all utilizations of prisoners by the firms. The I.G. eventually had to balance accounts with the OS as well as with the firms on the remunerations for the often very complicated leading of workers (work at hourly pay, contractual work etc.) (Examination Dr. Embros of 27 February 1948, Trans. Germ. I. 7951, Eng. P. 7874/75).

It was not a legal obligation but a favor toward the various sub-contractors which caused the I.G. Farben also to make available barracks camps for nearly all workers and employees of those firms working on its contracts, to take over their feeding and beyond that to take care of their clothing. In view of the great number of sub-contractors concerned this set-up came about also as a matter of expediency and for reasons of simplification of the administration and of economy of raw materials and ultimately was in the interest of the employees themselves since the smaller sub-contractors could not offer them the same advantages as the I.G. Farben. From the legal viewpoint this state of affairs did by no means release these construction site superintendents of the 250 sub-contractors from their legal obligations as plant leaders.

It is clearly evident from the legal situation as outlined above that also in the sole field in which the responsibility

was not exclusively that of the SS - that is the actual technical instructions for the work to the various labor service leaders of the SS and/or Nazis - was also a responsibility of the plant leaders and not of the Building and Construction Management of the I.G. Farben.

The case in chief xxx furthermore has shown that in the beginning the prisoners worked almost exclusively for subcontractors and that as late as the end of 1944, 5000 of the 7000 prisoners allocated in effect worked for these firms and only 2000 in the shops and plants of the I.G. Farben.

(Doc. exh.: 13 B, Doc. 1505, 4 charts.)

(Examination Duerrfeld of 16 April 1948, Tr. Germ. F. 11849, Eng. F. 11840,

Affidavit Faust, Doc. exh. 19, Doc. Doc. 861, Vol. 1, P.100

" Murr " " 18 " " 853 " 1, P. 92

" Santo " " 20, " " 854, " 1, P. 101

F. Delimitation of the responsibility toward the "Rue-
Bauleitung" - Request - Construction Management.

The so-called "Rue-Bauleitung" was a completely independent construction management similar to the Construction Management of the I.G. plant, and which was formed from state officials who were directly or indirectly subordinate to the Breslau branch office of the armament industry.

This "Rue-Bauleitung" was formed upon the request of the I.G. Farben and represented a compromise solution after the I.G.'s wish to place the management and supervision of the entire plant construction into the hands of the Organization Todt had not materialized. The request was born out of the realization, which was already outlined above and to which the defendants Dr. Fabros and Dr. Duerrfeld had come in that the I.G. Farben as a chemical enterprise should not burden itself with the supreme management of such gigantic construction tasks in view of the fact that

due to the entire war control system automatically all details, which building entails, were regulated by the Reich itself. Due to technical reasons the War Ministry did not take over the entire construction management, but only a part which it administered completely independently from the I.G. Construction Management in all branch offices of the plant set-up (Station, Airways, Barracks Camps). This government office also was in charge of the building management for Camp IV for prisoners. Apart from this task the "Rue-Bauleitung" also exercised state supervisory functions over the I.G. Construction management and also with regard to labor allocation about which the "Rue-Bauleitung" as a government control office gave expert opinions to the employment office as the corresponding government control office. It even exercised allocation rights over the skilled and semi-skilled workers which were assigned to the actual building operations. (Examination Duerrfeld of 19 April 1946, Tr. Germ. F.11944, Vol. 1, P.11731/32)

Dr. Ambros of 27 Feb. 1946, Tr. Germ. P. 7938, Vol. 1, P.7860/61

Affidavit Swato, Amer. Exh. 20, Doc. No. Doc. 682, Vol. 1, P.103-4 Sec. 3

"	Oppenheimer,	"	17,	"	"	"	435,	"	1, P. 90, Sec 1
"	Murr,	"	18,	"	"	"	853,	"	1, P. 93, Sec 3
"	Paist	"	19,	"	"	"	961,	"	1, P. 96, Sec. 3

G. Delimitation of Responsibility of the I. G. Farben toward the SS.

Through the comprehensive material which the prosecution introduced concerning the allocation of prisoners it has tried to create the impression that the I.G. was responsible for everything that concerned the fate of those prisoners who were assigned to the construction of the Buchenitz Plant.

In contrast hereto the case in chief of the defense has shown that the total responsibility for the allocation of the prisoners, their accommodation, food, clothing, medical care, disciplinary treatment etc. rested solely with the SS, in other words with the administration of the Concentration Camp Auschwitz. Nobody was better able to judge the situation than the Chief of the Economic and Administrative Main Office of the SS, Oswald Pohl, who as a prosecution witness had to testify that in fact the total responsibility lay in the hands of the SS, as was outlined above (Examination of the defendant Pohl of 24 November 47, Tr.Germ. P.4240,43, Engl. P.4211/12). In the same manner Pohl testified in affidavits:

(Affidavit Pohl, Doc.Exh.62, Doc.Exh.482, Vol.3, P.115

" " " " 66, " " 90, " " 135

To underscore this statement of facts the defense refers to the further testimonies by the competent referents who were working at the time in the Economic and Administrative Main Office of the SS and in the Concentration Camp Auschwitz.

(Affidavit Maurer, Doc.Exh.63, Doc.Exh.77, Vol.3, P.122

" Sommer, " " 64, " " 427, " 3, P.125

" Burger, " " 68, " " 933, " 3, P.140)

Not only the competent SS offices but also the highest referent for such legal questions in the Reich Ministry for Labor testify to the unequivocal and complete responsibility of the SS for the prisoners allocated for work in industry. The Ministerial Director concerned, Dr. Himmler, confirms that the working conditions laid down for civilian workers did not apply to concentration camp inmates assigned to work in the national economy and that the prisoners were under no contract.

105
1
14 & 15
53 & 54
9-14, Sec.
2, 15
59, Sec. 7
86/88
103, Sec. 8
120, Sec. 23
90, Sec. 6
81, Sec. 3 & 5
01.16, P. 21).

In order to round out the evidence through testimonies by persons of the most various positions working in the I.G. Plant, we like to refer to some affidavits which are listed below.

←

H. Delimitation of responsibility of the I.G. Farben for the English prisoners of war with regard to the Wehrmacht.

The accusations by the prosecution with regard to the English P/W's working in the Auschwitz plant do not refer to the employment in itself since the English were employed only in the building and construction firms (Examination Dr. Duerrfeld of 18 April 1948, Tr.Germ.I.1.083, Eng.I.11795) and thus no infraction against the Geneva Convention can be alleged, but merely to the medical care and perhaps also to the treatment at the construction sites. In this respect the defense must state that with regard to these P/W's and toward the Wehrmacht, under the authority of which they stood, the situation was quite similar as far as responsibility was concerned to that described in the preceding section with regard to prisoners and the so.

The barracks camp which was placed at the disposal of the Wehrmacht for the English P/W's was in every respect unequivocally under the command of the Wehrmacht.

As far as the other treatment of the English at the construction site is concerned no conclusive evidence was introduced by the prosecution. To the contrary, the defense can refer to the examination of the prosecution witness Coward who was the speaker for all British P/W's in the P/W Councils. In his examination on 13 November 1947 (Tr.Germ.I.3768, Eng.I.3685/86) this competent witness testified that he was not complaining, that he was in no way complaining against the treatment to which the British soldiers had been subjected in the Auschwitz plant.

Moreover, the defense can refer to the fact that during the year and a quarter that this P/W Camp existed it was twice visited by a delegation of the Geneva Red Cross which paid tribute to the I.G. Farben for this camp which in the opinion of the delegation was the best English P/W Camp. (Examination Helmut Schneider of 14 April 1948, exp. P.11408)

Although, as was outlined above, medical care for the English P/Ws was the exclusive concern of the Wehrmacht, we wish to refer at this time to the result of the case in chief by the defense with regard to this specific point in order to avoid discussing this question at some other place in this brief. According to this result, the supplementary medical examination of the English P/Ws, which was described and reproached by the two English doctors in their affidavits introduced by the prosecution, was carried out upon the request of the Wehrmacht Commandant of the P/W enclosure by the plant physician of the I.G. Farben because at that time the Wehrmacht camp did not have at its disposal its own German physician who might have conducted a confidential check-up. (Affidavit Paschel, exp. exh.160, Doc.1173, Vol.13, P.16)

It further follows from a document dating from that time that the number of sick was not restricted to 3%, as was alleged, but that it was around 10%, as was also admitted by the two English physicians.

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affidavit Spencer, Pros. Exh. 1486, NI 11707, Vol. 75, E.F. 171, G.F. 198
 " Robertson " 1487, NI 11708, " 75, " 173, " 200
 Weekly Report Doc. Exh. 393, Doc. Doc. 1413, Vol. 17, E.F. 52)

It follows from page 63 of this sole document, chronicle with figures of E/Ws that there were 966 E/Ws in the camp at that time and page 68 indicates that 840 were assigned to work. We thus see that not less than 13% of the camp population was either sick or assigned to intra-camp duties.

(affidavit Dr. Paschel, Doc. Exh. 160, Doc. Doc. 1173, Vol. 15, E.F. 16) as proof for the generally unobjectionable and correct treatment of the English E/Ws by I.G. Farben Plant functionaries we may refer to the affidavits which were introduced as evidence by the defense as well as to the examination of the defendant hims lf.

(examination Dr. Duerrfeld of 19 April 1948, Tr. Garmen, E. 12019-21 E. 11013, Eng. E. 11701-95)

affid. L. Mueller	Doc. Exh. 81, Doc. Doc. 630, Vol. 7, E.F. 39, Sec. 9
Hoesch	" " 87 " " 722, " 54, E.F. 27, " 8
Bertke	" " 89 " " 700, " 5, E.F. 54, " 9
Dion	" " 92 " " 763, " 5, E.F. 58, " 9
Kubatz	" " 96 " " 645, " 5, E.F. 79, " 11
Klotz	" " 128 " " 635, " 7, E.F. 36, " 4
Klein, Peter	" " 130 " " 669, " 7, E.F. 44, " 4
Burg	" " 177 " " 439, " 7, E.F. 105, " 6
Frey	" " 179 " " 498, " 7, E.F. 124, " 11
Harlos	" " 185 " " 791, " 8, E.F. 19, " 8
Pallasko	" " 188 " " 838, " 8, E.F. 30, " 7
Stroehle	" " 194 " " 833, " 8, E.F. 56, " 9
Layer	" " 254 " " 927, " 10, E.F. 76, " 5

Affidavit Wittmer, Doc. Ex. 338, Doc. Loc. 1250, Vol. 13, P. 87/88

Ex. 161, " " 1253, " 15, P. 19

I. Delimitation of Responsibility of the Building and Construction Management of the I.G. Farben Plant toward Authorities and Offices of the Party.

Quite apart from exploring the question as to whether the facts would indicate an offense on the part of the defendant the defense deems it necessary in connection with ascertaining the personal responsibility of the defendant to point out how little was left to the manager of an economic enterprise to account for in the Third Reich in the field of social welfare during the war as long as he carried out the numerous laws and orders. Both the defendants Dr. Faber as well as Dr. Guerrfeld pointed out in an impressive manner on the witness stand that as a result of the huge over-organization of economic regimentation and the inflated government and party bureaucracy had on a construction job such as the Auschwitz Plant. There was hardly a field in the procurement of materials (also including those used for social welfare purposes) and no field in the allocation and treatment of manpower which was not regulated somehow by orders, laws and other provisions and for which not several offices considered themselves competent and authoritative at the same time. The manager of an enterprise and quite certainly an engineer who, as the defendant, held a relatively insignificant position had enough to worry to find his way through the maze of orders.

without getting into conflict with the L., the Gestapo or ultimately with the concentration camp itself. There were for more than 100 offices and supervisory agencies, which continually issued out orders to the construction site of the Auschwitz plant or checked it. Not a day went by without many of such official visitors being in the Auschwitz plant and conducting their check-ups, and often they did not leave the plant without calling attention to the penal provisions of the law.

Particular attention must be called to the position of the German Labor Front (DAF) which considered its exclusive domain to say the last word in the management of manpower, both German and foreign. Thus it had reserved the right to appoint and/or confirm the appointment of the camp leaders for the foreigners' barracks camp and that way exercised a decisive influence on the entire extra-vocational life of the foreigners.

(Examination Dr. Wieros of 27 Feb. 48, Tr. G.L. 7549/54, R.F. 7872/75)

Dr. Duerrfeld of 15 Apr. 48, Tr. G.L. 11805, 67, 11812-13
D.L. 11570, 72, 73, 79

Asst. Wieros of 14 Apr. 48, Tr. G.L. 11539, 11395,
11397/8

Dr. Duerrfeld of 15 Apr. 48, Tr. G.L. 11870, 87,
D.L. 11659, 11676)

In view of these facts and in consideration of the many hundred of prominent representatives of the Authorities who all gave orders to, supervised and checked the defendant Dr. Duerrfeld and his collaborators at the construction site the question arises: If there was at all an offense committed at the

construction site could the defendant Dr. Duerrfeld be accused of any guilt at all and not rather the competent representatives of the authorities who incessantly issued orders and made checks? But as a matter of fact, not a single one of these hundreds of visitors found a sign of a criminal offense on the part of this plant manager whom they were checking, since neither the defendant Dr. Duerrfeld never received any somewhat serious complaint nor was the prosecution able to introduce any evidence to substantiate such allegations although a great number of those who then were the competent representatives of the authorities are still available.

J. Validation of responsibility of the I.G. Farben plant Auschwitz toward the Auschwitzgrube. The prosecution introduced evidence in 2 volumes (Vol. 50 and 51) which concern exclusively internal affairs of the Auschwitzgrube GmbH, that is the old Auschwitzgrube, the new mine of the Auschwitzgrube and the Jannino-Grube. The defense of the defendant Dr. Duerrfeld in its case of chief already introduced a motion in which it was stated that the Auschwitzgrube GmbH was a fully independent company with its own plant leader and therefore also its own responsibility. Now, however, the prosecution has introduced an affidavit by the manager of the Auschwitzgrube on the basis of which the motion which had been submitted to the court had been rejected at the time (affidavit 2-1-50 12/12/50).

Proc. 4th. 1556, AI 12010. This affidavit, however, was retracted in its legal part by the examination of the deponent on 25 November 1947 (Tr. Saikeshan Gorm. P. 4379-4403, Engl. P. 4352-4385). If any gap should yet have existed the case in chief fully verified this conclusion in the case of the defendant Dr. Guerrfield.

The result is as follows:

- 1) The Fuerstengrube GmbH including the King Jannina is a completely independent company.
- 2) The sole business manager was Generaldirektor Saikeshan - who quite certainly did not have to take any orders or directives from the defendant Dr. Guerrfield.
- 3) Also the Chief Engineer of the firm, Dr. Gormann was entirely independent from the defendant Dr. Guerrfield.
- 4) Merely upon the request and for the order of the Fuerstengrube the I.G. Farbenindustrie as a helping move for a friendly company and its managers who were its friends made available its wide experiences in the field of feeding and managing of barracks camps and took over the camp management and the feeding of the barracks camps of the Fuerstengrube GmbH. The catering establishments of the I.G. Farbenindustrie Auschwitz therefore acted merely as any other catering firm and they were responsible in their management to the Fuerstengrube GmbH. The legal responsibility remained regardless of this arrangement with the Fuerstengrube GmbH.

5) During the entire time that the I.G. Farben helped out as described under 4) it never received any complaint whatsoever but to the contrary only appreciation for its management. Nor did any abuses in the fields taken over by the Auschwitz plant come to the attention of General-director Falkenhahn prior to his examination on the witness stand as a prosecution witness. This makes it all the more doubtful that the defendant Dr. Duerrfeld knew of any abuses if such abuses actually existed.

(Examination Dr. Duerrfeld of 19 April 1948, Tr.G.F.12039-41,
S.F.11810/11

with opinion relative to cross. exh. 1566, XI 14010

Examination Dr. Bruns of 11 Mar 48, Tr. G.F.9075, S.F.8982

Affid. Falkenhahn, Doc. exh. 164, Doc. Doc. 1159, Vol. 16, P. 52,
Sect. 1 & 3

" Hermann, " 165, " 1163, Vol. 16, P. 56,
Sect. 7

" Sevelsberg " 166, " 1236, Vol. 16, P. 60,

The foregoing also answers the remaining evidence which was introduced by the prosecution with regard to the alleged responsibility of the I.G. Farben plant Auschwitz for the Auerstengrube GmbH.

(Cross. exh. 1537, XI 10886, Vol. 81, eng. P. 4

" " 1740, " 11637, " 81,

" " 1741, " 10906, " 81

" " 1536, 10535, " 81 eng. 1.46

From these evidence documents it merely follows that the Auschwitz plant rendered aid without however relieving the Auerstengrube GmbH from any obligations as plant leader. It furthermore follows from the examination of Dr. Duerrfeld that in view of the legal situation outlined

he had no authority to issue orders or take action in the field of labor allocation for the Fuerstengrube GmbH and he therefore was unable--as is assumed by the prosecution--to display any initiative with regard to the allocation of prisoners to the Fuerstengrube GmbH. By introducing its Exhibit 1544 (NI 11019, Vol.81, Eng.P.16) the prosecution tried to support its assumption that the defendant Dr. Duerrfeld was substantially instrumental in bringing about the allocation of prisoners to the Fuerstengrube GmbH.

The defendant, however, stated on the witness stand irrefutably, objectively and clearly what was known to him as an outsider about the negotiations leading to the allocation of prisoners to the Fuerstengrube GmbH. In his opinion the allocation came about fully automatically when the workers who up to that certain time had been working under police supervision in the Fuerstengrube were to be transferred to a concentration camp and when in this manner the camp which was under police supervision automatically became a work camp and branch camp of the concentration camp Auschwitz.

(Examination Dr. Duerrfeld of 19 Apr. 1. 48, Trans. G.F. 18945-47, S.I. 11815/18)

Furthermore, the defense refers to the two previously quoted affidavits by the manager Stukenhahn and the Chief Engineer Hermann and also to the affidavit of the competent referent in the Regional Employment Office, Regierungsrat Wittich

(Doe. ex. 131, Doe. Doc. 1200, Vol. 14, P. 44/45.

(Affidavit Hitter, Doe. ex. 104, Doe. Doc. 1043, Vol. 14, P. 39).

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II. The procurement of prisoners for the I.G. Plant Auschwitz.

A. The order for the procurement.

The theory advocated by the prosecution is that the I.G. took the initiative for the procurement of prisoners for the construction of the Auschwitz Plant and that the I.G. during the construction period constantly exerted pressure to get more prisoners, because according to the opinion of the Prosecution the procurement of prisoners was a lucrative business for the I.G.

Now, it was the prosecution itself which introduced the decree by Goering, dated 18 February 1941, pursuant to which it was ordered by the Supreme Reich Authority that for the expansion of the I.G. Plant Auschwitz, as many prisoners as possible should be made available from the concentration camp Auschwitz. From the examination of the defendant Dr. D u e r r f e l d of 15 April 1948, German transcript page 11789, English transcript page 11554 and from the submitted Duerrfeld exhibit 125 (Duerrfeld document 1450, letter by Dr. Ambros to Dr. v. Staden, dated 15 March 1941) it can be proved unequivocally that the defendant Dr. D u e r r f e l d was informed for the first time at the beginning of March 1941 that the plant Auschwitz was to be constructed, i.e. at a time when the order of Goering had already been issued.

Therefore, the defense can confine itself to examining whether in view of the existence of such a special decree issued by the highest Reich official in the economic field, the defendant can be charged with any kind of crime, if he employs ^{*if it was brought about the organically increase*} prisoners or ~~bring about the necessary increase~~ in the number of the employed prisoners assigned for the construction job in accordance with such an order.

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This question was dealt with not only by the General Plenipotentiary for Special Questions of Chemical Production (Gebechem) Dr. Krauch, who was examined as a witness, but also by the former Fieldmarshal Milch, who, as Chief of Staff of the Fighter Command, ordered many tens of thousands of prisoners to be employed in the aircraft industry. Krauch testified, (examination of 14 January 1948, German transcript page 5253, English transcript page 5225) that any negative attitude towards Goering's decree was quite out of the question. It concerned a state of emergency, besides, Germany was at war and a refusal to comply with the decree would have been interpreted as sabotage of the war economy and

would have been punished quite certainly with the death penalty. Milch arrived at the same conclusion (examination of 15 January 1948, German transcript page 5366/7, English transcript page 5337).

If these high officials considered the order for the allocation of the prisoners and for their employment for the entire construction period according to the progressive requirements as absolutely binding, how much more so must it be binding for an installation-chief like the defendant Dr. D u e r r f e l d ! Krauch testified on 16 January 1948 (German transcript Page 5416, English transcript page 5388/89) in an unmistakable manner that it was D u e r r f e l d 's duty to exhaust to the utmost the possibilities given with the Goering decree, and to see to it that the corresponding number of prisoners was allocated to the job. It can be assumed that he would have been held responsible if he had refused to act in that manner.

The defendant Dr. D u e r r f e l d learned more than once during the last four years of his professional activity, although in other connections, that such penalties were not mere paper threats.

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(Examination Dr. Duerrfeld of 16 April 1948 German transcript
page 11c56, English transcript p.1164)

Affidavit Rumscheidt, Due. exn. 137 Due. doc. 164 doc. book 15 p.2

" Froeheliser " " 138 " " 1099 " " 15 p.7

" Heepke " " 406 " " 1436 " " 19 "66/2

Although neither the defendant D u e r r f e l d nor any of the other employees of the I. G. liked to work with prisoners, for the very reason that they were prisoners who could not be assigned to the right jobs and at the right time and one could not expect them to be enthusiastic about the work, there was no alternative for the defendant and his colleagues but to comply with the issued order. However, the order was actually carried out only to the extent absolutely necessary for the progress of the construction work and only then when it was impossible to get other civilian workers. It is true that the defendant personally was not aware of the Goering decree however, considerably later, after he was entrusted with the over all planning, he got knowledge from the letter of the Gebecker addressed to Dr. Ambros, dated 4 March 1941 (prosecution exhibit 1422, NI 11006, doc. book 72, English version page 71). In the same manner he was informed of the content of the letter which Krauch wrote to Ambros on 25 February 1941 (rebuttal document 2199 NI 11936, doc. book 93 page 1) i. e. after his assignment to Auschwitz, probably at the same time when the first construction-conference took place. ~~Thereby~~ I be permitted to point to the fact that in the handwritten distribution list of the original document, the name of the defendant D u e r r f e l d was undoubtedly added at a later date, and was inserted after the first group of names.

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At the time when the letter was received, any participation of the defendant Dr. Duerrfeld in the Auschwitz construction project was not even considered. He did not see this letter either, but he was informed, as had been ordered in the letter, "in a suitable manner" of its "basic principles", according to the wording of the letter itself. The letter is not initialed by the defendant.

The fact that the defendant Dr. Duerrfeld pursuant to a directive of his superior (Dr. Buotefisch) participated as a technical Referent in a conference with Obergruppenführer Wolff at the end of March 1941, surely does not suffice to construe a criminal act by the defendant or even ~~participation in~~ ^{any initiative} ~~aiding and abetting the perpetration of such~~, because this conference was only brought about by the decree of Goering.

(Examination Buotefisch of 10 March 1948, German transcript page 8850-56, English transcript page 8769-76).

The fact that the defendant Dr. Duerrfeld reported in the subsequent initial construction-meeting about the outcome of this conference does not seem to have any importance as to criminal law. (Prosecution exhibit 1426, FI 11115, doc. book 72, German page 158). Furthermore it is only natural that the defendant Dr. Duerrfeld, following his instructions, after the conference with Wolf at Berlin, discussed together with the construction manager Faust and other special advisers the details of the allocation of prisoners for work at the construction site. The rebuttal document, prosecution exhibit 2200, (FI 15148, doc. book 93, German transcript page 4, English transcript page 3) is Dr. Duerrfeld's report concerning the conferences with the camp commander of the Auschwitz concentration camp, which took place on 27 March 1941 and is therefore nothing more than a supplement and confirmation of the testimony

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of the defendant, Dr. D u e r r f e l d, on the witness stand. Nothing is contained in that document which could be interpreted as a crime committed by the defendant.

(Examination Dr. Duerrfeld of 16 April 1948, German transcript page 11853 and 11914, English page 11643).

In summing up, it is proved that the defendant Dr. D u e r r f e l d and with him all the other defendants were ^{in state of} ~~under~~ ^{necessity} ~~constraint~~ with regard to the employment of concentration camp prisoners, and that beyond that a national emergency existed; furthermore that Dr. D u e r r f e l d and also the other defendants acted unequivocally upon orders. With regard to the legal aspects, the following shall be remarked: (Notstand)
1.) Condition of constraint: (State of ^{necessity} ~~emergency~~) The question of the condition of constraint and or state of ^{necessity} ~~emergency~~ and the special condition of self defense have been set down in legal provisions in nearly all penal codes but they were based on individual cases.

The individual is exempted from punishment under certain conditions, if he acted "in his own defense or in defense of somebody else". However, jurisprudence and legal literature recognize the fact that also the general public i. e. the "state" itself can be in a state of ^{necessity} ~~emergency~~ and that interventions ^{and acts} which are supposed to alleviate this state of emergency can become exempt from punishment. First of all the question was raised, whether the conception of self defense which refers only to individual cases can be expanded in such a manner that it covers also the conception of self defense on behalf of the state i. e. self defense in favor of the state and the general public. The answer to this question was in general in the affirmative. The corresponding provisions which cover the self defense clause are valid also for the state of emergency, as legally expressed for example in article 5

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of the German penal code and as set forth in almost all modern penal codes. These provisions, too, are intended to cover first of all individual cases. However, also from these provisions jurisprudence and legal literature arrive at the conclusion of a basic recognition of a state of national emergency with its corresponding effects. With regard to the version in which the conception of the state of emergency is clad generally in the penal codes, the transfer of these provisions to cover also the conception of a national emergency, can be only a transfer of the basic principle. If the conception of the state of emergency should be transferred to the state itself and the individual is empowered to intervene in order to bring about the abatement of such a national emergency, it concerns just as in the case of the state of emergency dealing with individual cases, an evaluation of objective values. Necessarily this must lead to the result that the individual, if such kind of actions are conceded him, is not only 'free of guilt but that moreover his actions become justified.' In other words, the so called national emergency, even if it is recognized only to the application of the general conception of the state of emergency as to its aspects according to penal law, becomes an argument which excludes unjust acts. (Unrechtsausschliessungsgrund)

Now what does the "transfer" in the sense of the basic principle imply applied to cases of the national emergency? Whether a national emergency is "undeserved" or not, whether for example the war is "aggressive" is here in this sense of no importance. The existence of the state of emergency alone is decisive. Instead of the general limitations of the individual interests the over all vital

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interests of the general public and the state itself have to be considered.

In summing up, the so-called national emergency can be defined as a state of emergency with regard to vital interests of the state and the general public itself which cannot be removed by any other means.

Inasmuch as an action according to it is condoned not only a ground for exemption of punishment has to be assumed but it concerns also a genuine justification argument.

Which consequences result from the aforementioned legal basis for the I. G.? In March 1942 and during the following years there was a turn in the development of the war which brought about a "present" i. e. an imminent severe danger to the vital interests of the state as a belligerent power. An increase of the war production could be achieved, in consideration of increased requirements of the Wehrmacht for troops, only by the allocation of new sources of manpower.

The assumption of a national emergency presupposes that the action which constitutes the subject of the indictment, served for the removal of the danger. Therewith the objective purpose of the action and not only the subjective purpose of the acting party is meant. Therefore, the question has to be raised whether the employment of prisoners represented an objectively suitable means for the averting of a danger threatening the state. This question has to ^{be} answered in the affirmative in any case without the necessity of furnishing any further proof.

Finally, another premise exists to the effect that the national emergency must be of such nature that it cannot be averted by "any other means". According to the case in chief it can no longer be doubted that a different way of removing the danger was not feasible.

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In view of this fact and the legal consequences resulting from it the conduct of the defendants becomes justified also then, if the Tribunal contrary to my opinion should arrive at the conclusion that the allocation of concentration camp prisoners for purposes of the war industry fulfils the stipulations of a penal law.

This reason for excluding any unjust acts is true also in the case that the tribunal should consider the working conditions (labor allocation) as a set of facts fulfilling the stipulations of a criminal law. An exception could be made only in such a concrete case, when the plant management makes itself guilty of an individual crime. However, the prosecution did not furnish any evidence which would substantiate such an assumption. However, not only the German Reich and its Wehrmacht were in a state of emergency but also these defendants, themselves. In the scope of this trial it is not necessary to explain in detail that, at least beginning with the year 1939, an order from the Reich Government was absolutely binding, and that a refusal to carry out an order or decree involving vital interests of the state would have been tantamount to a direct endangering of the life of the individual.

A refusal of an order to employ prisoners could not be seriously contemplated at all. Least of all this could be done by somebody like the defendant Dr. Duerrfeld, who was not even a member of the Vorstand of the I. G. and who merely was entrusted with the task of carrying out the orders and directives issued to him by his superiors.

The Military Tribunal VI in case No 5, in the trial

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against Flick et al, recognized the reason for excluding any unjust acts resulting from a state of emergency in favor of the individual and I shall refer in particular to the findings for this decision.

2.) Acting upon order.

By employing prisoners in implementation of the Goering order the defendant Dr. D u e r r f e l d, as already explained, carried out only an order of the highest economic authority (Plenipotentiary for the Four Year Plan).

In this particular case he was bound to the order issued to him no less than any soldier in any other army. A refusal to carry out the order issued to him could not be contemplated by him, the less so as at least from 1942 on, Germany was involved in a war which held the very existence of the entire nation in its balance.

The evaluation of the legal aspects of these facts lead to the following conclusion:

The compliance with a binding, although illegal order by a subordinate official creates for the latter exonerating circumstances and therefore exempts him from punishment.

This question is controversial only for that reason that some legal experts consider the action of a subordinate person not only as exculpated but beyond that as "justified". A further examination of this dispute is not deemed necessary in the scope of this trial, because in both cases the outcome is the same, namely the exemption from punishment of the offender.

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In view of the fact that principally the law valid at the time the act was committed has to be applied, because the defendants lived under it at that period and that law was binding for them, this question has to be examined in the light of an analogous application of Article 47 of the German Military Penal Code. According to this article the subordinate person obeying an order is guilty

of the punishment of a participant if he knows
that the order of the superior refers to an action
which aims at a common or military crime or offense".

However it is not true, as sometimes assumed, that Article 47 of the German Military Penal Code per se settles the question as to how far military orders are binding or not binding. It is a question of constitutional law and administrative law. However, it must always concern as under other military conditions, "orders pertaining to duty matters". This condition obviously applies to the case of the defendant Dr. D u e r r f e l d . Article 47 of the German Military Penal Code stipulates, according to its text, that the penalty of a subordinate can be upheld only if the latter "had knowledge" that the order of the superior" referred to an action which aimed at a common or military crime or offense". In all other cases only the superior officer issuing the order suffers the penalty. Just as most of the Military Penal Codes of other armies, also the judicial system as embodied in Article 47 of the German Military Penal Code shows the tendency of a far reaching limitation of the responsibility according to criminal law of the subordinate person. That this tendency evolved from the opinion

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"to secure the compliance with the duty for obedience to which the subordinate is bound, in the interest of discipline and the striking power of the Wehrmacht", does not alter the fact as such. The point in question here is to evaluate the legal position at the time when the action was carried out. Article 47 of the German Military Penal Code interprets the responsibility of a subordinate person as to criminal law only if he knew that the order aimed at an action which aimed at a crime or offense. The German administration of justice demands in such a case a "definite knowledge" on the part of a subordinate person; consequently cases of mere doubt (conditional intention) or the mere presupposed knowledge (negligence) are expressly excluded. Furthermore the idea alone that the execution of an order objectively might result in committing a crime or offense is likewise not sufficient. Moreover the superior officer must have intended such a result and the subordinate person must have been aware of this fact.

In applying these basic principles it is beyond doubt that in the case of Dr. D u e r r f e l d these conditions were not fulfilled. He considered the order issued to him to employ prisoners at the construction of the I. G.-plant to be necessitated by the exigencies of the war.

It is true that in arguing against all this, it is possible to refer to Article 8 of the Charter of the International Military Tribunal which states: "The fact that a defendant acted pursuant to an order of his government or of a superior, shall not free him from responsibility, but may be considered as mitigation of punishment."

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if the Tribunal determines that justice so requires." Correspondingly, Article II 4 b of the Control Council Law No. 10 states:

"The fact that any person acted pursuant to the order of his government or his superior does not free him from responsibility for a crime, but may be considered in mitigation."

Against this objection the following can be argued:

The defendants were subject at the time of their actions to German law; the extent of their responsibility was regulated by it and in fairness and justice this responsibility has to be referred back also to that particular period of time, even today. However, in case that the Tribunal should be not willing to apply the legal provisions which were valid at the time of the action but should use the Control Council Law No 10 as the basis for its judgment, although this would constitute an obvious violation of the ex post facto stipulations inherent in criminal laws, I want to emphasize here the following: Even from the above mentioned provisions of the Control Council Law it is impossible to conclude that every order of a superior becomes under all circumstances meaningless as to its criminal law aspects. This is true also with regard to the question of non-culpability and therewith with the exemption from punishment. The provision states only that the fact of such an order per se does not free a person from the responsibility of a crime; however, it is not

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set all out of the question that it can be important in connection with other facts also with regard to this question. The primary legal interpretation for these considerations is contained in the conception of the so-called conflict of duties (Pflichtenkollision). According to this it is necessary to take into due consideration also the personal situation of the defendant at the time of the action, in order to arrive at a just evaluation of the case. This is true also with regard to the personal situation in which the offender was placed pursuant to an order by a superior which bound and influenced him. The "order" is liable, according to the specific situation, to extend the limits of his culpability in his favor. The renowned German scientist and expert on criminal law Reinhardt Frank, laid down the following axiom with regard to the so-called conflict of duties: "Inasmuch as the conception of the conflict of duties is not expressly stipulated, the axiom must be valid that the more significant, more important duty has to be fulfilled even if it turns out to be prejudicial to the less important duty, and therefore the non-compliance with the latter is not illegal. "It has rightly emphasized again and again that the decision in a case of a conflict of such divergent duties cannot be a positive legal one, but in the end must be a decision of an ethical nature. Therefore, the conscience of the individual itself must be allowed some latitude in such a situation too and not everything can be left to the crude elements of an external application of criminal law alone. This absolutely "personal" character of genuine ethical conflicts has been fully recognized and emphatically emphasized in the standard philosophical literature.

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For instance Nicolai Hartmann in his "Ethics" states the following (on page 431/22 of the 2nd edition) concerning genuine moral and spiritual conflicts:

"It is a disastrous deception to believe that such questions can be solved principally in theory. Enough border cases happen, in which the conscience conflict is severe enough and demands a solution which may be different according to the special individual ethos of the person concerned. It is inherent in the nature of such conflicts that in them moral values are in juxtaposition and that it is impossible to emerge without incurring some guilt one way or another. Therefore a person who has to face such a situation cannot avoid making a decision; what alternative is left to the person who must face a serious conflict involving grave responsibilities is just this: He has to make a decision according to his best knowledge and belief, i.e. according to his own searching evaluations.

Moral values involved and taking the consequences

of the decision upon himself
-----"

It does not seem necessary to explain in detail that it is quite out of the question, seen especially from the ethical point of view, to compare such a personal decision with considerations pertaining to criminal law.

B.) The increase of the labor allocation.

Now the prosecution submitted some more reports about construction conference's which show that at certain times

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an increased number of prisoners was employed at the construction site. These figures correspond entirely with the testimonies of the defendant in the witness stand concerning the gradual increase of the allocated prisoners working with the subcontractors who carried out the construction and later on working within the work shops and plants of the I. G. itself.

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an increased number of prisoners was employed at the construction site. These figures correspond entirely with the testimonies of the defendant in the witness stand concerning the gradual increase of the allocated prisoners working with the subcontractors who carried out the construction and later on working within the work shops and plants of the I. G. itself.

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Here too, according to the evidence on hand, an initiative of the I. G. or of the defendant or the committing of a crime is quite out of the question. He was bound by an order "to allocate prisoners to the largest possible extent". Therewith it was intended that the plant was never supposed to have an unfilled quota of workers. In reality, however, the construction site had at all times unfilled requests at the local employment office, on file often asking for thousands of workers. This proves clearly that the plant, in spite of the issued order, fulfilled it only to such an extent as it deemed technically and humanely answerable to the responsible officials of the construction job. (Examination Dr. Duerrfeld of 16 April 1948, German transcript page 11860, English transcript page 11650).

The defendant explained on the witness stand in an impressive manner the development of the allocation of prisoners; according to the data of the I. G. the quota of the prisoners working at the construction site amounted, before the evacuation of the plant, to 16 %, computed as to the effective performance to 11 % of the total personnel, where by approximately only 1/3 to 1/2 of all prisoners allocated to work were under the direct supervision of the I. G. (Duerrfeld exhibit 135, Doc. document 1505, 5 charts). His statement shows quite clearly that according to the order of one of the highest state authorities to the four partners which were involved in that case, namely by the Reich Ministry for Labor, the Delegate General for the Building Economy Dr. Todt, the commandant of concentration camps and the General Plenipotentiary for Chemistry, in their local offices (employment office, field office Kattowitz of the Delegate General for the Building Economy, commander of the concentration camp and I. G. construction-administration)

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acted absolutely according to order, and that the entire allocation of prisoners during the four years of construction developed quite automatically, without any other initiative apart from that of Goering being involved, quite certainly not any initiative on the part of the lowest echelon i. e. the defendant Dr. D u e r r f e l d. The less so because of the fact that the employment office, in view of the impossibility of fulfilling requests of the I. G. Plant for furnishing civilian manpower, referred the construction management repeatedly to the necessity for the allocation of ^{inmates of the concentration camp} manpower, pointing out at the same time that in the entire Gau Upper Silesia more than 40 other large scale allocation projects had to act likewise.

(Examination Dr. Duerrfeld of 16 April 1948, German transcript page 11854, English transcript page 11645.

Examination Dr. Duerrfeld of 19 April 1948, German transcript page 11936, English transcript page 11724/25.

Affidavit Helm, Schnelder, Due. exh. 141. Due. doc. 1164 doc. book 14 page ⁵³ 15 sub. div. 5

Affidavit Wittig, Due. exh. 139, Due. doc. 1208, doc. book 14 page 44/45).

The last mentioned affidavit by Wittig shows also that the President of the Regional Employment Office had to work together with the commander of the concentration camp. Auschwitz concerning labor allocation. Moreover both these officials were members of the labor board Upper Silesia, in which problems of the Gau Upper Silesia were discussed conjointly, a fact which is proved by the evidence submitted during the Pohl Trial (case 4) before the Military Tribunal at Nuernber. The development of the allocation of prisoners at Auschwitz appears in a quite natural and logical light, if the following

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is kept in mind; the Reich issues the order for the construction of an enterprise necessary for the war effort and decrees the deadlines for the various stages of the construction.

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The firm ^{ordering} ~~entrusted~~ with the construction makes its requirements known as to the materials, manpower, means of transportation and raw materials, necessary for the project. The Reich guarantees the fulfilment of these requests for the various stages of the construction. Based upon these guarantees, the ^{firm ordering the} construction ~~firm~~ starts with the work and requests accordingly from the various local authorities of the Reich the granted quotas until they are exhausted.

(Examination Dr. Ambros of 27 February 1948, German transcript page 8019 English transcript page 7909)

Examination Dr. Duerrfeld, of 15 April 1948 German transcript page 11854, English transcript page 11845).

The order for the occupancy of labor camp IV was issued by Pohl himself, i.e. by the highest chief of the WVHA or the SS (Economic and Administrative Main Office) of the SS) and furthermore he ordered that from all concentration camps in Germany suitable assembly workers, (skilled metal workers, electricians etc.) were to be brought into that camp.

(Examination Dr. Ambros of 1 March 1948, German transcript page 8197, English transcript page 8122)

Weekly report No. 70371 of 23 September 1942, prosecution exhibit 2130, NI 144(89).

This leads to the question of the ^{composition} ~~make-up~~ of prisoners and the ^{composition} ~~make-up~~ of the question whether due to the ^{composition} ~~make-up~~ of prisoners the defendant could arrive at any doubts of the suitability of their employment. In this connection the following should be remembered: During the conference at Berlin in March 1941, ^{convicts} ~~prisoners~~ were mentioned, i.e. consists who had committed some kind of crime and who were placed in concentration camps in order to serve their time. This impression that it concerns in a predominant manner such "convicts" was substantiated also during the first visit of officials of the I.G. at the concentration camp Auschwitz and for that reason in the contemporary documents until 1943.

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the inmates of concentration camps or labor camps are always referred to as "convicts".

(Examination Dr. Duerrfeld of 19 April 1948, German transcript page 12008, English transcript p. 11778,

Affidavit Haeseler, Doc. exn. 56, Doc. doc. 460 Doc. book 3 p 93 subsec. 5

Prosecution exhibit 1503, NI 11141, Doc. book 77 German page 55

" " 1428, NI 11116, " " 72, German page 182
engl. p. 25,
engl. p. 111).

During the time of the beginning of the allocation, only a small part of the prisoners consisted of political prisoners, mostly Poles, i. e. such prisoners who as armed members of a civilian resistance movement opposed and harassed the German army, as for instance the prosecution witness Treister, (examination of 26 February 1948, German transcript page 7822 and 7849, English transcript p. 7704, 7731)

or who were suspected of being members of such movements. Not until 1943 did the number of political prisoners begin to increase and grow until the end of 1944 to such an extent that most of the concentration camp inmates consisted of political prisoners. In view of the system in power at that time it was naturally impossible to gain any authentic information as to the reasons for their confinement; therefore all the prisoners had to be treated as ~~state convicts~~ *prisoners of the state*.

(Examination Dr. Duerrfeld of 19 April 1948, German transcript page 11926, English transcript page 11718).

However, the employment of such convicts could not be viewed as something extraordinary or even illegal by the defendant, because of the fact that in the official publications of the German Administration of Justice it was considered "that work constitutes the basis for a well regulated and effective penal administration", this referred also to the cases of the so-called persons under protective custody. Apart from all this, the defendant had already at that time the feeling that it must mean a favor for a prisoner to be allowed to work.

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Therefore, the defendant had to consider the entire labor allocation as a perfectly correct and natural event, particularly as also the sick-and accidents insurance provisions taken care of in a seemingly orderly manner by the SS, a fact which is proved by a document of that time.

(Affidavit Faust, Due. exh. 42, Due. doc. 956 doc. book 3, page 8
Examination Dr. Duerrfeld of ¹⁹April 1948, German transcript
page 11947, English transcript page 11734

Due. exh. 377, Due doc. 1231, doc. book 16, page 23,
" " 378 " " 1332, " " 16, " 29,
" " 379, " " 1234, " " 16, " 31,
" " 380, " " 1235, " " 16, " 34).

For the clarification of the question whether the defendant Dr. Duerrfeld, in spite of the issued order and the legal basis which to him seemed to be beyond reproach, did something in order to avoid the allocation of prisoners or at least to limit it, the defense introduced an abundance of evidence, sufficient to draw clearly the following picture: The allocation of prisoners was for the defendant just as for all his co-workers and his superiors, depressing as human beings, because it concerned the employment of prisoners who had to work at the plant or at the construction site not out of their own free will, and lacked therefore the right spirit for work; Apart from this, the employment of laborers who are deprived of their liberty always constitutes technical difficulties, and as known from experience results in a technically inferior performance and as proved in the case in question was also relatively expensive. For this reason the plant management and especially the defendant Dr. Duerrfeld left no stone unturned to get rid of the cumbersome allocation of prisoners at least to limit its extent. During the examinations of Dr. Duerrfeld and Dr. Ambros, as well as the witness Schneider, it was explained in an impressive manner how many means

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were tried in order to get free civilian manpower for the plant. The Regional Employment Office and the Local Employment Office at the construction site were kept busy, several trips abroad were undertaken in order to bring about labor contracts with foreign firms on a voluntary basis. Such free labor contracts were actually concluded with approximately 15 to 20 foreign firms, pursuant to which the plant was able to obtain approximately 7000 to 10 000 free workers. Even a large number of so-called "Schmelt Poles", who were only under police surveillance were preferred instead of employing prisoners and many more such measures were carried out. No measure which only slightly promised some success of procuring free manpower was left untried. It is really moving to re-read now how discussions had to take place at the construction site almost daily in order to find out in what manner the procurement of such manpower could be brought about.

(Weekly report No 72/73, Due. exn. 381, Due doc. 1401, doc. book 17, p. 1

Examination Dr. Duerrfeld of 19 April 1948, German transcript page 11946, 11850, English transcript p. 11733 11640

" Dr. Ambros of 1 March 1948, German transcript page 8129-30, 8055/56, English transcript page 11390

" Helmut Schneider of 14 April 1948, German transcript page 11579-81 and 11639, English transcript page 1140

Weekly report 86/87, Due. exn. 386, Due. doc. 1406, doc. book 17, page 42,

Affidavit Dr. Duerrfeld, Due. exn. 3 Due. doc. 1046, doc. book. 1 page 21).

In summing up, the witness Schneider, the competent department chief for the procurement of workers in the Auschwitz plant, confirmed these efforts to get civilian workers and testified that during his activity at Auschwitz in no case were requests made for the procurement of prisoner workers by the I. G. Auschwitz.

(Examination of 14 April 1948, Transcript English page 11426).

In spite of all their efforts the requests of the I. G. Plant to the Employment Office were never complied with. On the contrary, larger and smaller groups of workers were continually channelled to other construction projects or armament projects and the plant management of the I. G. was consoled with the statement that they would receive more prisoners to make up for this (Affidavit Schneider, Duerrfeld Exhibit 141, Duerrfeld Doc. 1164, Book 14, page 52, Z. 3-5)
(Affidavit Wittig, Duerrfeld Exh. 139, Duerrfeld Doc. 1208, Book 14, page 44).

In substantiation of its theory that the I. G. attempted to increase the number of prisoners allocated the prosecution submitted several minutes of the construction conferences.

(2nd Construction Conference, Pros. Exh. 1428, NI-11116, Vol. 72, German page 186)

16th " " " " 1446, NI-11122, Vol. 73, German page 146

26th " " " " 1511, NI-11114, Vol. 7, German page 154)

The author of these construction reports themselves comments upon these documents and invalidates this evidence.

(Affidavit Heidebrook, Duerrfeld Exh. 140, Duerrfeld Doc. 1189, Book 14, page 46, Z. 3A-C)

Now, in refutation of the defense's theory that the allocation of prisoners during the entire period of construction developed automatically and in due course the prosecution has introduced Document 2207 (NI-15256 with excerpts from the weekly reports). Not one of these reports indicates that I. Farben requisitioned prisoners in lieu of civilian workers or even showed a preference for them. If the letter to Pohl dated 3 March 1943 was mentioned in the memorandum dated 19 March 1943

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then I can only say that it is unfortunate that this letter itself is not on hand. This would show that the plant management did not always limit itself in making known its complaints concerning the allocation of prisoners to the concentration camp commandants, but even called Pohl's attention to the shortcoming

Moreover, nothing more can be inferred from this memorandum of 19 March 1943 other than that this concerns ^{technical derivation of} technical exigencies. How strong was the initiative on the part of the labor allocation authorities may be adduced from the same document, excerpt from weekly report 76/77. This mentions an "assignment" of Pohl-prisoners, of an anticipated increase in quota to 4,000 workers" and of the withdrawal of 1800 to 2600 foreign workers by the Ministry for Armaments. It would be difficult to imagine the construction technicians would have dreamed up such ridiculous measures. On the contrary, this document proves how the assignment of prisoners to the I. G. Plant was used by the labor allocation authorities to assign civilian workers to other plants short of manpower where the technical conditions were not present for the allocation of prisoners.

The defendant expressed himself irrefutably concerning the fact that the prisoners were considered to be the most ^{expensive} ~~valuable~~ workers on the construction site.

(Examination Dr. Duerrfeld of 19 April 1946, Trans. German page 11936, 11943)

English page 11724/25 and 11730

Examination Dr. Ambros of 27 February 1946, Trans. German page 7999
English page 7888)

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From all these attendant conditions it may be seen that this was a case of a war emergency to which the defendant had to adapt himself. Moreover, this same emergency had the identical effects on the Upper Silesian industry. It was known to the defendant that prisoners were likewise assigned to numerous enterprises in Upper Silesia. On the basis of the evidence on hand it can be seen further that there were enterprises of the German armament industry which employed up to 50,000 prisoners and that in the entire industry of the Reich there were 500 labor camps of 700 firms employing some 500,000 prisoners. The I. G. Plant at Auschwitz was one of these 500 labor camps and the I. G. employed a total of about 1% of all concentration camp prisoners assigned to industry.

(Examination Dr. Duerrfeld of 19 April 1948, Trans. German page 12048 English page 11818-1819)

SS Letter Duerrfeld Exh. 372, NO-597, Book 16, page 16

Affidavit Sommer, prosecution exh. 372, NI-1005, Book 16, page 1

* Pohl, Duerrfeld Exh. 62, Duerrfeld Doc. ⁴⁸⁷~~482~~, Book 3
Page 118, Line 7

* Schneider, Duerrfeld Exh. 2, Duerrfeld Doc. 651, Book 1, Page 67

* Appel, " " 93, Duerrfeld Doc. 420, Book 1
Page 62

* Helwert, " " 382, " Doc. 1229, Book 11,
Page 119, Line 22).

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III. Camp IV of the I. G. Farben as Prisoners-labor camp.

A. Reasons for Labor Camp.

The prosecution charges the I. G. Farbenindustrie with having constructed and maintained its own concentration camp for its own use for the purpose of exploiting the prisoners in its Auschwitz camp. In particular it charges the defendant Dr. Duerrfeld with having taken an important part in this undertaking and names him as Director and chief of construction of the Monowitz concentration camp.

In contradiction to this the defense case-in-chief has clearly shown that the construction of the labor camp was wholly in the interest of the prisoners themselves, and that this labor camp was not a concentration camp, as was the general conception following post-war disclosures, or even an "extermination camp", but one of the 500 labor camps which were scattered all over Germany.

The case-in-chief showed the following:

Camp IV was planned and constructed by the I. G. Farben as a regular labor camp for civilian German workers. At the 16th Construction Conference held on 6 March 1942 (Pros. Exh. 1440, NI-11192, Vol. 73, Germ. p. 140, Eng. pg. 80) this decision was reached. At the 19th Construction Conference held on 30 June 1942 that is even before the allocation of prisoners in the I. G. plant had to be stopped owing to the catastrophic typhus epidemic in the main camp Auschwitz, it was decided not to make this camp, construction of which was already under way, available to Germans but for those prisoners employed in the plant (Pros. Exh. 1447,

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NI-11137, Vol. 74, Ger. pg. 48, Eng. pg. 24). This decision was based primarily on the following reasons: It was desired to protect the prisoners working on the construction site from the danger of the typhus epidemic which was already rampant in the camp and at the same time save the prisoners the long and tiring transport to the place of work by train. In addition the following was contemplated: I. G. wanted to avoid, as had been the case up to that time, a constant turnover of prisoners and in this manner assure so to speak a regular staff of workers for the plant. It was desired to turn these prisoners into valuable workers for the plant through training them for specific jobs and plants and vice versa create conditions which would be conducive to making the prisoners happy in their work and success, and thereby bring about a personal relationship between prisoner and plant. On the whole it was believed that the prisoners themselves would be removed from the entire concentration camp atmosphere through their transfer to this labor camp and the hope was held to improve the entire working and living conditions in this camp through a gradual influence, in particular in the matter of feeding, as well as in that of the remaining civilian workers in the plant. All these reasons seem plausible and logical today when one considers how the plant fought to get willing and capable workers (see section ~~7~~⁸) and how the very question of skilled workers and the question of the coming generation of skilled artisans for this new plant under way in the East had actually become a vital problem. The defendants Dr. Duerrfeld, Dr. Schneider and Dr. Ambros as well as the witnesses Giessen, Hellmuth Schneider and Braus discussed these various reasons in detail.

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Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg.
11947/48 Enc. pg. 11734/35.

Examination Christ. Schneider, 20 Feb. 1948, Trans. Germ. pg.
7502, 7509, Enc. pg. 7443, 7449,

Examination Dr. Giessen, 24 Feb. 1948, Trans. Germ. 7601
Enc. 7537/38,

Examination Dr. Braus, 12 March 1948, Trans. Germ. 9097
Enc. 9001/2,

Examination H. Schneider, 14 April 1948 Trans. 11398/99).

The testimonies of the defendants are confirmed by the
SS functionaries who were in charge of the ~~construction~~ ^{establishing} of labor
camps.

(Affidavit Maurer, Duerr. Exh. 63, Duerr. Doc. 77, Book III, Pg.
123, Sec. 3

" Sommer, " " 64, " " 427, Book III, Pg.
127, Sec. 5

I wish to call attention to the following affidavits from the
large number of statements of confirmation of the facts on hand
made by co-workers of the plant, ~~that~~ ^{and} is representatives of the
authorities:

(Affid. Schneider, Du-Exh. 2, Du-Dok. 651, Book I, Pg. 2-4, Sec. 3

"	Dumling,	14,	102,	I,	74,	
"	Killiet,	16,	108,	I,	88,	3
"	Sevelsburg	22,	43,	II,	2	
"	Eisfeld,	69,	687,	IV,	2,	3
"	v. Loh,	71,	47,	IV,	10,	3
"	Hosch,	87,	722,	V,	25,	4
"	Appel,	93,	420,	V,	61	
"	Jastrzenbski	424,	105,	V,	103,	
"	Wittig,	104,	117,	VI,	9,	
"	Schlettig,	105,	134,	VI,	15,	
"	Walfer,	116,	322,	VI,	88,	5,
"	Buhlan,	120,	442,	VII,	10,	9,

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Affid. Hoeseler, Du-Exh. 122, Du-Dok. 461, Book VII, T. 22, Sec. 4,

" Schuster,	132,	695,	VII,	51,	2
" Siegle,	183	729,	VIII,	7,	3,
" Wegner,	264,	167,	XI,	3-6,	
" Dietze,	265,	103,	XI,	15,	
" Hackenschmidt,	368,	281,	XI,	32,	
" Czesch,	270,	356,	XI,	41,	
" Helwert,	282,	1229,	XI,	105, 120	
" Nierste,	289,	675,	XII,	33,	4
" Köhler,	340,	1260,	XIII,	96,)

In order to clarify the logical connecting factors attention should once more be called to the fact that when Obergruppenführer Pohl himself ordered the assignment of prisoners to Camp IV, prisoners from other camps in the Reich were to be taken for the very reason of the epidemic danger in the Auschwitz Camp.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Ger. pg. 11946, Eng. pl. 11733, Pros. Exh. 2130, NI-14489.)

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If one compares the evidence of the prosecution and the defense, it is not difficult to see that the prosecution is correct in its allegation only to the extent that the suggestion for the accommodation of the prisoners in the proximity of the plant actually was initiated by the I. G. Farbenindustrie with the collaboration of the defendant Dr. Duerrfeld. However, in contrast to the statement of the prosecution, it further shows that the camp was not built as a concentration camp but originally as a regular German labor camp, that the construction was not at all in charge of the I. G. Farbenindustrie but in charge of the government "Armament Construction Management" (Rü-Bauleitung) and that as far as I. G. Farben was concerned the existence of this camp was not motivated by material or much less inhumane considerations, but that, on the contrary, the construction management of the I. G. plant desired to raise the whole question of prisoner allocation to an entirely different humane level through this measure. The tireless endeavors of the I. G. plant management and of the defendant Dr. Duerrfeld were vindicated by the actual and constantly increasing improvements of the living and working conditions of the prisoners, as will be shown below. There can be no doubt that many thousands of prisoners remained alive and in good health as a result of this allocation. What would have happened if the labor camp had not been made available?

B. Was Camp IV a labor camp or a concentration camp?

The prosecution has constantly maintained, and such statements have also been confirmed by some of the affiliates of the prosecution, that Camp IV, already treated in detail in part III A, which was put at the disposal of the SS for the accommodation of the prisoners working on the construction site,

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was a concentration camp. As the defendant Dr. Duerrfeld already stated on the witness stand, it is perhaps a play on words and perhaps even wholly immaterial for the judgment of this case what name this camp might be given. However, in the interest of truth and for the historical presentation of the conditions, the defense considers it in order to point out that Camp IV termed was a so-called "Labor camp" of the SS or in the parlance of the SS, "Outside Camp of the Auschwitz Concentration Camp". In the vernacular of the I. G. Farbenindustrie it was "Camp IV" or "prisoners' Camp."

Pres. Document (Duerr. Exh. 371, Doc. NI-317, Duerr. Book 16, pg. 10)

which is a letter of Pohl to Himmler, clearly shows that Auschwitz Camp III had 14 outside camps at the beginning of 1944 of which the largest "Labor camp" was that of the I. G. Farbenindustrie in Auschwitz.

In addition to this contemporary document, the affidavits of the SS functionaries who were in charge of these matters at that time clearly indicate the organization of the Auschwitz concentration camp with its outside labor camps.

(Affidavit Pohl, Duerr. Exh. 62, Duerr. Doc. 487, Book 3, Pg. 116-118, Sec. 2, 3, 6.

" Sommer, " " 64, " " 427, Book 3, Pg. 125
Sec. 2 and 7

" Burger, " " 68, " " 953, Book 3, Pg. 141,
Sec. 2

If the prosecution considers the presence of guard towers and electrically charged barbed wire fences as a criterion for concentration camps, then the defense would like to point out that such institutions exist even today without such camps bearing the name "Concentration Camp." In any event, Camp IV was in all details identical to a regular billet camp of the I.G. in its entire make-up.

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Further, on the basis of an affidavit of the former prisoner Hess, the prosecution viewed the railroad shunt track which allegedly lead into the Monowitz Camp "for bringing in the prisoner transports constantly arriving" as another criterion of a concentration camp, and incorporated this charge in the indictment. (Indictment, Eng. pg. 61) In refutation thereof the case-in-chief has clearly shown, and this fact is apparently not being seriously contested by the prosecution, that such a shunt track to this labor camp never existed, but that a regular track was located far from the camp within the plant, as exists on every plant thoroughfare. Transports of prisoners never arrived over this track.

For the sake of completeness attention should be called to the testimony of the defendant Dr. Duerrfeld, of the witness Schneider and the former prisoner Hirsch concerning this point.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg. 11953-55 Eng. pg. 11740-41,

" H. Schneider, 14 April 1948, Trans. Eng. pg. 11399, 11413-15

" Hirsch, 21 April 1948, Trans. Germ. pg. 12231 Eng. 12002.)

This evidence cannot be refuted by the weekly report § 57 of 28 July 1942 which is an informal report. (Proc. Exh. 2126, NI-14524).

C. Responsibility for Management of Camp IV.

In spite of the endeavors of the prosecution to characterize "the labor camp "Camp IV" as a "Concentration Camp," it has nonetheless attempted through presenting a vast amount of evidence, which is comprised almost exclusively of affidavits of former prisoners of this camp,

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to hold the plant management of the I. G. Plant Auschwitz responsible for the camp management and thereby for the ^{internal} incidents which occurred within this ~~plant~~ ^{camp} although every person knows that the SS was in charge of concentration camps.

Without bringing up the internal conditions of the camp at all for discussion, the defense wants to make clear that the responsibility for the managements of this labor camp as an outside camp of the Auschwitz concentration camp lay clearly and exclusively within the domain of the SS.

No one can state this more convincingly than the former functionaries who were attached to the executive body of the concentration camps, for these men obviously could have no interest in heaping more responsibility than necessary upon the SS executives following the post-war disclosures concerning concentration camps and their modus operandi. Nevertheless, the chief of the WVHA, his co-worker for labor allocation in Berlin, and his Economic Administrative Leader in the Auschwitz concentration camp confirmed the SS's full responsibility for the management of this labor camp. They emphasized expressly that this responsibility covered all phases of the camp administration, in other words, accommodation, medical care, feeding, clothing and disciplinary treatment and that it was not possible at all for the I. G. Farbenindustrie to exercise any influence upon the internal administration of the labor camp.

(Affidavit Pohl, Duerr. Exh. 62, Duerr. Doc. 487, Book 3, pg. 109, Sec. 1

"	Pohl,	66,	43,	3,	136, 3,
"	Maurer,	63,	77,	3,	123, 5
"	Burger,	68,	933,	3,	141,

Sec. 3 and 5

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For the sake of completeness it should perhaps be added here that the SS' responsibility also extended to the place of work in addition to that for the camp. As an example I refer to Pros. Doc. NO-1290, a letter from Pohl, in which an 11-hour shift is prescribed.

(Duerr. Exh. 367, No-1290, Duerr. Book 13, Pg. 2-3.)

This document does not purport to imply that the prisoners actually worked 11 hours, which on the basis of the generous and humane attitude of the I. G. Farben towards all people working on the construction was not even the case, but it should simply be stressed here that the SS on its own initiative required a minimum working period on the basis of the principles of penal Administration even outside of the camp for the work with the outside firms. The regulations governing period of work were complied with in that the time consumed in marching to work and the time out for breakfast and lunch was included,

In this connection the defense calls attention to the very clear chart summarizing the responsibility together with the affidavit of the former chief of construction of the plant, Faust, and the testimony of the defendant and several witnesses which also included former prisoners of Camp IV.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg. 11956, 11949, Eng. pg. 11742, 11736,

Affidavit Faust, Duerr. Exh. 21, Duerr. Doc. 438, Book 1 Pg. 105, Chart

Examination Dr. Abros, 27 Feb. 48, Trans. Germ. pg. 7942, Eng. pg. 7865

" H. Schneider 14 April 48, " Eng. pg. 11399,

" Nestler 20. April 48, " Germ pg. 12179, Eng. pg. 11968/70,

" Hirsch 21. April 1948, " Germ. 12232, 12242, Eng. pg. 12004, 12014,

" Kraschowski, Du-Exh. 394, Du-Doc. 1422, Book 19, pg. 6.)
To prove that the fact of full responsibility of the SS for Camp IV and the impossibility for the I. G. Farben to intervene in the internal conditions of the camp in any way, even

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in matters concerning those people working on the construction
site, was known, the defense refers to a number of affidavits.

(Affidavit, Czekaia, Duerr. Exh. 80, Duerr. Doc. 621, Book 4, Pg. 80,

"	Muller,	81,	630,	4,	87, Sec. 7,
"	Mascho,	82,	640,	4,	94, 8,
"	Bartke,	91,	779,	5,	53, 2,
"	Dion,	92,	783,	5,	57, 7,
"	Floto,	95,	414,	5,	72,
"	Pabst,	96,	645,	5,	78/79,
"	Dietrich,	102,	405,	5,	108, 1,
"	Buhlan,	120,	442,	7,	7, 4,
"	Kleinpeter,	123,	669,	7,	44, 3+
"	Burg,	177,	439,	7,	105, 4,
"	Harlos,	185,	791,	8,	18, 6
"	Luckel,	245,	837,	10,	38, 3,
"	Struth,	239,	924,	12,	45, 2,
"	Adolphi,	294,	935,	12,	50,
"	Proetz,	299,	1005,	12,	70,
"	Köhler,	340,	1264,	13,	99,
"	Neufville,	354,	1104,	14,	69,
"	Siepenkothan,	398,	1426,	19,	32, 6,

Since in view of the facts described the plant police of the
plant had not the slightest to do with the guarding of camp IV
or otherwise with the supervision of the prisoners while on the
job, attention should be called to the affidavit of an official
of the plant police in refutation of this allegation raised in
the indictment.

(Affidavit Lueder, Duerr. Exh. 148, Duerr. Doc. 389, Book 14 Pg. 94,
Examination Hirsch, 21 April 1948, Trans. Germ. pg. 12238, Eng. pg.
12010.)

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In judging the full responsibility of the SS a very important result of the case-in-chief should not be overlooked. The prosecution witnesses as well as those of the defense made identical statements under cross-examination that under the supervision of the SS there existed an wide-range prisoners' autonomous administration in the camp, since the SS was completely lacking the personnel which would have been capable of carrying out the administrative duties of such a large camp. There can remain no doubt that this autonomous administration of the prisoners

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resulted in a very important influence on the living conditions in the camp and also exercised influence on the work assignment in the plant via the channels of the so-called Labor Allocation Office, perhaps even decisive influence, and that even the majority of the prisoners called as witnesses by the prosecution belonged to this prisoners' autonomous administration, some of them in the highest positions.

(Examination Nestler, 20 April 1948, Trans. Germ. pg. 12180, Eng. p. 11969/7)

"	Herzog 12. Nov. 1947,	"	"	"	3654-5	"	"3632/33,
"	Treister 26. Feb. 1948,	"	"	"	7833,	"	"7715,
"	Hirsch 21. Apr. 1948,	"	"	"	12234/35, 12238,		
					Eng. Pg. 12005/07, 12009,		
"	Schermuly 12. May 1948,	"	Germ.	pg.	14738,	Eng.	p. 14498.
"	Schulhof 12. Nov. 1947,	"	"	"	3623,	"	" 3600.)

D. Accommodation in Camp IV.

At this point it should be established quite clearly for this and the following four sections III-E to III-H that after dealing with the responsibility in the preceding Section III C it would be superfluous from the standpoint of the defense from legal considerations to treat the internal conditions of the camp. However, the the prosecution has submitted such a mass of evidence in the form of descriptions by former prisoners of the internal conditions of the camp that the impression is created that the abuses allegedly existing there were so flagrant that they must have become known to even the most disinterested outsider, certainly however to the I. G. executives who were responsible for the management of the I. G. plant. For this reason, the defense feels compelled to examine at random some of the descriptions of the prisoners and to return to the facts substantiated by unassailable evidence.

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In affidavits of the prosecution and through the testimony of three witnesses here in court the theory was raised that a generally known over loading of the camp even at the time when prisoners were first assigned there, when the I. G. was not in a position to be cognizant of all the conditions, had taken place. It was alleged that in October 1942³ to four personnel barracks were on hand in Camp IV.

(Affidavit Tauber, Pros. Exh. 1445, NI-4829, Vol. 75, Eng. pg. 111

" Stern, " " 1570, NI-4828, Vol. 75, Eng. pg. 125,

Examination Stern, 12 Nov. 1947, Trans. Genl. pg. 3691, Eng. pg. 3668,

" Hess, " " " " " " 3672, " " 3649).

The defense wishes to refer to the proof submitted by the defendant on the basis of contemporary documents that on 18 October 1942 not three to four barracks, but 25 barracks containing 3 000 beds, and on 1 November 1942 32 barracks and on 15 November even 36 barracks were available. However, at this time there were no 2,000 prisoners in the camp.

(Examination of Dr. Duerrfeld of 19 April 1948, Trans. Genl. 12028, Eng. pg. 11799, and the weekly reports quoted there which are contained in Document Book 17 for Duerrfeld as Exh. 381-385).

It was further stated by prosecution witnesses (Examination) Rausch of 12 November 1947, Trans. Genl. pg. 3653, Eng. pg. 3631) that on the average 300-400 men had lived in one barracks and it was alleged in the indictment that 2 to 4 men had to sleep in one bed on rotten straw. However, the architect in charge of the planning of Camp IV at that time completely ~~changed~~ ^{reconstructed} over the camp on the basis of old plans and proves that with the actual equipping of the barracks with 16 5 beds

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in the communal sleeping quarters a total of 9400 beds had to be available not counting those unoccupied barracks used as depots and workshops. However, since according to the figures submitted by the defense and the testimonies of the defendant on the witness stand

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the camp had at the end of 1944 a total occupancy of 9,000 persons, the sleeping of two to a bed would have been impossible to recognize by an outsider under normal conditions.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg. 11974/5, Eng. pg. 11760/61,

Affidavit Doerning, Duerr. Exh. 14, Duerr. Doc. 102, Book 1, Pg. 75-78).

In this regard the distribution of prisoners to the barracks was obviously handled by the prisoners' functionaries themselves.

(Examination, Pros. Witness Reusen, 12 Nov. 1947, Trans. Germ pg. 3654, Eng. Pg. 3632.)

Certainly conditions were more crowded in this camp than were those in the camps of the I. G. plant. However, this was decided solely by the SS according to their rules and from an initial figure of 120 men increased to 165 men. Had the SS fixed a smaller occupancy quota, then the Armament Construction Management (Ru-Bauleitung) would have set up more barracks more quickly. However, since the Armament Construction Management was at the same time a part of the office granting permission for the procurement of barracks, any influence of I. G. Farben in this case was completely out of the question for a two-fold reason. From an economical standpoint, if 500 barracks were to be set up for the plant, then it was of little importance whether 30 barracks more or less were built.

I. G. Farben acted simply like a home owner and put living quarters at the disposal of the SS with all the installations for central heating, water, light, power and equipped with the most modern large-kitchen installation, in accordance with regulations. In addition it was incumbent upon I. G., on the

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instructions of the SS, to take care of the fencing and bringing in of power. Moreover, the internal equipping, arrangement and occupancy of the camp as well as the procurement of beds, tables and chairs, was, as has already been proved in several instances, exclusively the concern of the SS.

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This is shown clearly from the testimony of the defendant and a number of affidavits.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. Pg. 11957/8 Eng. pg. 11743)

" H. Schneider, 14 April 1948, Trans. Germ. Pg. 11645, Eng. pg. 11405

Affidavit Killet, Duerr. Exh. 16, Duerr. Doc. 108, Book 1, Pg. 88, Sec. 4, 5

"	Danning,	17,	435,	1	90	2
"	Faust,	15,	959,	1,	81/83	
"	Savelsberg,	22,	43,	2,	4,	
"	Danning,	39,	1064,	2,	118,	
"	Braus,	70,	429,	4,	5, 2,	
"	Schuster,	132,	695,	7,	52, 2,	
"	Muller,	173,	273,	7,	82, 2,	
"	Killet,	283,	119,	12,	10,	
"	Kuhler,	340,	1264,	13,	94,	
"	Viol,	316,	1151,	13,	17, 9	
"	Dreher,	414,	1414,	19,	112.)	

As was customary in all the billet camps of the I. G. Farben, the kitchen had an identical large mess hall which was available for the use of the prisoners.

(Examination Danning, 7 May 1948, Trans. Germ. pg. 14260, Eng. pg. 13960.)

The defendant Dr. Duerrfeld as well as Construction Chief Faust testified concerning the tents which were set up temporarily as quarantine housing.

(Examination Faust, 8 May 1948, Trans. Germ. pg. 14281/84, Eng. pg. 14890/8)

In refutation of the allegations of the prosecution witnesses, reference is made in the following to some of the statements of former prisoners on the witness stand. Camp IV was better than other camps in which he had been previously, states Nestler (Trans. Germ. pg. 12179, Eng. pg. 11968/70).

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Everyone had his own bed with 2 blankets or even a quilt, only two to three times in the two years he spent in the camp did it occur upon the arrival of mass transports that 2 men slept in one bed.....There was no rotten straw on the beds and such would not have been tolerated either by his comrades or by the senior block leaders. He welcomed the central heating installations. (Nestler, Trans. Germ. pg. 12180, Eng. Pg. 11969/70.)

The witness Hirsch testifies that the conditions of accommodation

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were particularly good in comparison to those in Auschwitz and Birkenau. Sleeping conditions were excellent and there was also sufficient straw available to permit possible changes at any time.

(Examination Hirsch, 21 April 1948, Trans. Germ. Pg. 12232/4,
Eng. pg. 12004/6)

Further reference is made to

(Affidavit Kraschewski, Duerr. Exh. 394, Duerr. Doc. 1422, Book
19, Pg. 2,

" Dietrich, " " 102, " Doc. 405, Book 5,
108, Sec. 2.)

Final reference is made to the affidavit of the competent department chief (Amtschef) Maurer in the WVHA of the SS who himself inspected the camp and found it in order.

(Affidavit Maurer, Duerr. Exh. 63, Duerr. Doc. 77, Book 3,
Pg. 123, Sec. 5).

E. Medical Care in Camp IV.

Through introducing a number of witnesses, the prosecution attempts to substantiate its allegation that the medical care was insufficient and incommensurate to that expected for human beings and that as a result thousands of prisoners lost their health or even died.

The defense wishes to point out that medical care in Camp IV was a concern of the SS, that actually the care of sick persons was in charge of the numerous prisoner physicians and male nurses (Examination of the ^{prosecution's witness} ~~defendant~~ Rausch of 13 November 1947, Trans. Germ. pg. 3795, Eng. pg. 3768) and that the I. G. plant Auschwitz, and in particular the defendant Dr. Duerrfeld, was unaware of insufficient medical care and that it could not have been aware of such conditions.

The defense's case-in-chief shows that the question of medical care of prisoners in Camp IV as a rule was handled exactly in the same way as in

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almost all of the other 500 labor camps in the Reich. Accordingly on the responsibility of the SS a camp dispensary was usually set up with funds of the SS of such size that the outside patients and less ²serious cases of illness could be taken care of in the labor camp itself. All protracted illness, and in particular those which necessitated an operation or those of an infectious nature, had to be transferred to the hospitals of the main camps which were the only institutions which had sufficient facilities for treatment. This much was also known to the defendant Dr. Duerrfeld so that it was not surprising if I. G. people in the one or the other case were informed that prisoners who were seriously ill were taken to the main camp for medical treatment.

These facts are confirmed by the persons holding the respective official positions.

(Affidavit Pohl, Duerr. Exh. 63, Duerr. Doc. 487, Book 3, Pg. 118-120,

" Burger, " " 68, " " 933, " 3, Pg. 142, Sec. 6).

Occasionally following the appearance of characteristic illnesses the defendant Dr. Duerrfeld made inquiries in order if necessary to intervene. He also ^{rendered} offered his good services whenever any shortcomings came to his attention. However, he never learned anything of inadequate or even irresponsible medical care by the SS or by the officially appointed prisoner physicians since he never received any kind of reports in this regard with the exception of the statistical status of the number of illness which he received every 14 days. No reports were ever issued in Camp IV concerning the nature of the illness and the number of cases transferred to the hospitals of the main camps or concerning ~~fatalities~~ *deaths*.

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(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg. 11967/9, Eng. pg. 11754,

Affidavit Paschel, Duerr. Exh. 54, Duerr. Doc. 850, Book 3, pg. 84-85.)

Numerous prosecution witnesses testified under oath that it was customary in the hospital of Camp IV that a prisoner could not be sick for longer than a period of 14 days, and that further not more than 5 % of the camp occupants could be sick, and that in addition this so-called "5 % and 14 days ruling" had been introduced at the ^{request} ~~behest~~ of the I. G. Farben. The prosecution submitted an illness register to the tribunal (Pros. Exh. 1493, NI-10186) which purports to prove these statements of the prosecution. A close study of this register by the defense, however, revealed that during the whole reporting period of approximately one year

- 1.) not 5 %, but 12,5 % of the camp occupants were reported sick,
- 2.) that the maximum permissible period of illness was not 14 days but that 35 % of all cases amounted to more than 14 days up to 273 days and that on the average every sick prisoner spent an average of 30 days in the hospital,
- 3.) that a double occupancy of the 700 beds in the hospital could not have been possible in consideration of the sick status figures amounting to approximately 700 cases of illness, and that
- 4.) the allegation that those sick prisoners sent to Auschwitz were not ^{sent} ~~nused~~ back to good health but had been exterminated is incorrect because a large number of the prisoners following their transfer to Auschwitz reappeared again in the hospital.

(Examination Dr. Duerrfeld, 19 April 1948, Trans. Germ. pg. 11958/60, Eng. pg. 11744/4-

Affidavit Haeseler, Duerr. Exh. 421, Duerr. Doc. 1441, Vol. 19, Pg. 134).

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The prosecution witness Hesse, who spent two years in the hospital, indeed never saw a written order of the I. G. for the hospital, but he states that he is quite sure that the alleged order to limit the number of illness must have been initiated by I. G. because the latter did not wish to have to pay the expenses for such cases beyond a period of 14 days. However, in that connection the I. G. actually had to make indemnification payments to the SS only for prisoners assigned to work

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and not for sick prisoners.

(Affidavit Hess, Pros. Exh. 1469, NI-4191, Book 75, Eng. pg. 116,
Examination Dr. Durrfeld, 19 April 1948, Trans. Gern. pg. 11958/60,
Eng. pg. 11744/46;

" Rausch of 13 Nov. 1947, Trans. Gern. pg. 3795, Eng. pg. 3768).

This same Hess, who confirms that with 50 nursing personnel and 25 prisoner physicians the medical care of the greatest extent was a part of the prisoners' autonomous administration (Examination Hess, Trans. Gern. pg. 3666, Eng. pg. 3644), testifies further that the drinking water in Camp IV was injurious to health (Pros. Exh. 1469, NI-4919, Book 75, Eng. pg. 116). The defense opposes this statement with contemporary documents according to which the drinking water was completely satisfactory.

(Expert opinion of the Reich Institution for the Supervision of Water and Air Purification (Reichsanstalt für Wasser- und Luftgüte)

Berlin-Dahlem, Durr. Exh. 36, Durr. Doc. 307, Book 2, pg. 89,
37, 1062, 2, 92,
38, 1057, 2, 110.

Examination Dr. Durrfeld, of 19 April 1948, Trans. Gern. pg. 12029, Eng. pg. 11800, 11801,

" Dr. Hunch 12 April 1948, Trans. Gern. pg. 14671,
Eng. p. 14333,

Affidavit Wagner, Da. Exh. 264, Durr. Doc. 167, Book 2, pg. 10,
Sec. 10)

For proof of the fact that medical care was in order in the opinion of the other prisoners, the defense calls attention to certain pertinent points of their testimony on the witness stand and in affidavits. The statements are made there that there were good surgeons, a good dental clinic just as in civilian life; there were convalescent wards for convalescents and new arrivals of undernourished prisoners; nothing was known of a "14-day regulation; everyone could report sick if he so

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chose; only well-known slackers were turned down; the whole dispensary was very well equipped; the SS physicians hardly paid any attention to the hospital and left the medical care exclusively to the prisoner physicians, etc.

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(Examination NESTLER of 20 April 48, transo. G.P. 12187/89,
 E.P. 11975/77,
 " HIRSON " 21 " " " G.P. 12238,
 E.P. 12007/10,
 " SCHER JULY " 12 May " " G.P. 14765/67,
 E.P. 14494/96,
 Affid. KULSCHESKI, Dec. Exh. 394, Dec. Dec. 1422, Book 9, p. 4,
 " FURSTENBERG " " 77, " 884 " 4, p. 60,
 " DIETRICH, " " 102, " 405, " 5, 5.109,
 5)

The defense further refers to the following affidavits as proof that nothing which would have shown up the medical conditions in Camp IV as having been bad was known to civilians either.

(Affid. L. ENGLING, Dec. Exh. 14, Dec. Dec. 102, Book 1, p. 79/86,
 " RIESS, " 30, " 143 " 2, " 45,
 " REILIN, " 32, " 840, " 2, " 75/76
 " FRICK, " 34, " 88, " 2, " 84,
 " RIESS, " 35, " 735, " 2, " 88,
 Section 8
 " v. LOM " 71, " 47, " 4, " 13,
 section 10
 " CHRIST, " 112, " 247, " 6, " 60,
 section 5
 " BOERNERT, " 211, " 1044, " 8, " 13,
 section 6
 " UNTERSTENHOFER 228, " 1088, " 9, " 89,
 " KULIK, " 229, " 1097, " 9, " 92,
 " NEUMEYER " 232, " 1004, " 9, " 103,
 " V. GIER " 264, " 167, " 11, " 6,
 section 4
 " BRENTZEL, " 296, " 950, " 12, " 56,
 " CHEIST, " 298, " 953, " 12, " 64,
 " EHER " 303, " 1021, " 12, " 83,
 " HOELTERADAT, " 308, " 1072, " 12, " 97,
 section 5
 " OTTOVITZ, " 154, " 1253, " 14, " 123,
 section 5

F. Rations in Camp IV

The defense compares the statement of the prosecution that the IG was responsible for the prisoners' rations and had, by providing the prisoners with an insufficient amount of food, caused a serious state of undernourishment and death

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as a result of the evidence with the following facts:

Up to the end of February 1943 the I.G. Farben had nothing whatever to do with the food-supplies for Camp IV and was unable to exercise any influence upon them. It was only prompted by the intention to improve the official rations of the prisoners by additional supplies coming from the I.G. Farben's own sources, and in order to make sure that the rations due to the internees would actually reach the Camp that the factory management of the I.G. Farben had, from November 1942 onward, under the pretext

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that they were severing the connection between the ~~main camp, Hirsch~~ ~~Station (permanent 2d Camp)~~ and Camp IV because of the danger of the spreading of epidemics, tried to take over the provisioning. From an economical point of view this step meant a flat voluntary contribution of approx. 75-85 Pf per capita per day to the upkeep of the internees so that there can certainly be no question of the I.G. Farben's having had any interests other than humane. However, after a long struggle, nothing more was accomplished but the concession of delivery of supplies to the kitchen, that is from the end of February 1943 on. All the I.G. Farben was able to do was to make sure that the delivered supplies were actually used for the purpose for which they were intended. The kitchen itself was under supervision of the SS. The distribution of the supplies was the concern of the prisoners' autonomous administration. The I.G. Farben delivered - and this statement can be proved - at least 2500 calories a day. Actually it amounted as a rule to 2800 because of the delivery of additional supplies. The defendant DUERRFELD, using for this purpose a chart put up in his study, controlled the number of calories which were issued on the basis of reports which were handed in to him. He also tasted the food several times and personally inspected the kitchen.

In addition to these rations which consisted of 80% heavy-workers' rations and 20% overtime-rations, there was a special soup ration the so-called "Dunssuppe" issued on its own initiative to all internees by the I.G. Farben on all the building sites in the factory grounds. (Exon.Dr. DUERRFELD of 19 April 48, trans.G.P. 11978-81

" Dr. AMERIS of 17 February ", " E.P. 11764-68,
G.P. 7941,
E.P. 7865.)

The supply-experts of the plant and the statisticians give an impressive picture of the rations delivered to the internees, and are without exception of the opinion that the rations were, considering the food-

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shortage in Germany, sufficient and good and certainly far better than those which are given to the German heavy workers today.

(Aff. BOHN, Doc. Exh. 25, Doc. Dec. 58, Book 2, p. 27 - 30,
" SAEVLSBERG " 22, " 43, " 2, " 2 - 4,
" KUNZ, " 26, " 844, " 2, " 33,
" REINHOLD, " 24, " 70, " 2, " 13 - 18,
" GIEBEL, " 266, " 109, " 11, " 18 - 19,
" HAHN, " 203, " 967, " 8, " 85.)

The statements made by the responsible chiefs of the catering establishments of the factory, SAEVLSBERG and REINHOLD, in their cross-examinations by the prosecution, could not be disproved. An analysis of the rations and a scientific specialist report about the adequacy of the rations with due consideration to the amount of work required is contained in the following two documents.

(Affid. KLEIN Doc. Exh. 417, Doc. Dec. 1437, Book 19 p. 125,
Specialist opinion of Dr. F. KUHNHAU, Doc. Exh. 466, Doc. Dec.

1524 ~~Maennchen~~

The responsible factory inspecting officer with whom the I.G. Farben had to fight for the size of the heavy workers' rations for the internees, supports the statement on hand. (examination VAJE of 15 April 1948, Transcr. G. p. 11758, E. p. 11926)

The witnesses SCHNEIDER and GIESSEN describe the good influence which the taking over of the supply delivery by the I.G. Farben had upon the obvious improvement of the appearances of the internees.

(Examination SCHNEIDER of 14 April 1948, transcr. E. p. 11431
" GIESSEN of 24 Febr. 1948, " G. p. 7602
E. p. 7538)

In order to mention just a few positive bits of evidence given by members of the factory who had some information about the prisoners' rations or even tasted them in Camp IV the defense herewith refers to the following affidavits:
(Affid. KULKE, Doc. Exh. 174, Doc. Dec. 301, Book 7, p. 94 sub. par. 10

" HOFER, " 205, " 974, " 8, p. 91,
" SCHMIDT, " 207, " 1036, " 8, p. 104, " 8
" W. GNER, " 264, " 167, " 11, p. 4,
" B ECKER, " 314, " 1128, " 13, p. 10/11,

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Affid. REISTER, Due-Exh. 319, Due-Doc. 1168, Book 13, p. 22,
" REISTER, " 335, " 1247, " 15, p. 79,
" V. LOM, " 71, " 47, " 4, p. 11,
section 4.

If one also combines the individual statements of these prisoners who were cross-examined as witnesses for the prosecution about bread-fat-soup-jam-sugar-rations etc. the discrepancy with the statements made by the defense seems smaller than before. The witness TUBER, for instance, confesses that he had received 375 g of bread and 25 g of margarine every day and on some days even double the quantity of margarine. (Trans. Exh. 1455, NI 4829, vol. 75, G.p. 131, E.p. 111).

The witness STERN essentially confirms this.
(Exam. of 12 November 1947, transcr. G.p. 3692, E.p. 3669).

The witness SCHULOF speaks of extra rations of sausage.
(Exam. of 12 November 1947, transcr. G.p. 3631, E.p. 3610).

This picture is completed, and this in accordance with the findings of the defense, by the statements made in Court by those prisoners who were called as witnesses by the defense.

(Examination HIRSCH of 21 April 1948 transcr. G.p. 12235, E.p.

" NESTLER " 20 " " " 12007/8,
G.p. 12183,
E.p. 11972,

Affid. FUERNBERG, Due-Exh. 77, Due-Doc. 884, Book 4, p. 59 No. 8

" DIETRICH, " 102, " 405, " 5, p. 107, 3

" KR. SCHENSKI, " 394, " 1422, " 19, p. 5,

Examination SCHENSKI 12 May 1948, transcr. G.p. 14766,
E.p. 14496)

We also wish to draw attention to the two photos of the prisoner NESTLER (Due-Exh. 20) which show that he was in a much better physical condition at the time of his dismissal from the prisoners' camp than he is now, which is not astonishing if he states that he had there, for instance, more fats than he is getting now as a heavy worker.

In conclusion it may be said incontrovertibly concerning the rations, that the fact that the I.G. Farben took over

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the delivery of supplies to Camp IV was very fortunate for the prisoners, that the quantities delivered by the I.G. Farben were adequate, and that there can be no question of any guilt whatsoever, or negligence on the part, of the defendant.

G. The clothing of the prisoners.

The prosecution insists that the I.G. Farben and its subcontractors sent the internees to work insufficiently clothed.

The defense compares this statement with the evidence as follows:

- 1) Supply of clothing, underwear and shoes was the concern of the SS (see par. III C)
- 2) It was actually carried out.
(Examination STSR of 12 November 1947, transo.G.p.3692 E.p.3669)
- 3) The I.G. Farben was not authorized to instruct the SS as to what kind of prison garb it wished the internees to be equipped with.
- 4) The I.G. Farben, through the defendant, remonstrated with the SS and succeeded to the extent that the internees were provided with thick civilian coats instead of the usual prisoner coats.
- 5) The I.G. Farben, on order of the defendant, delivered to the internees additional and of their own initiative, as far as it was needed, workers' protective clothing, rubber-boots, padded vests, leather-shoes, mittens, etc.
- 6) When it was freezing outside the I.G. Farben kept going in the plant-grounds hundreds of coke-baskets for all workers, including the internees, to keep warm.
- 7) Of course everybody felt exceedingly cold on very cold days when the temperature dropped below zero. Nobody, however, was expected to work in inadequate clothing.
- 8) Cases of severe frostbite ^{or injury} to health because of lack of clothing were not brought to the attention of the defendant.

(Affid. PESCHEL, Due. Exh. 54, Due. Dec. 850, Book 3 p. 85 No. 11

" V. LOM,	" 71,	" 47,	" 4, p. 13, " 11, 13
" BOEDIGER,	" 423,	" 419,	" 4, p. 72, "
" PAER,	" 108,	" 181,	" 6, p. 37, " 6
" HOENBERGER	" 114,	" 281,	" 6, p. 72,
" ALBERT,	" 201,	" 941,	" 8, p. 78,
" HOEFER,	" 205,	" 974,	" 8, p. 91,
" WEINICKE,	" 227,	" 1140,	" 9, p. 82,

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Affid. J. G. FER, Due. Exh. 234, Due. Dec. 1019, Book 5, p. 109,
" ROTH, " 249, " 1133, " 10, p. 53,
" RIBBEL, " 250, " 231, " 10, p. 56,
" SPENTZEL, " 296, " 950, " 12, p. 56,
" BUNG, " 297, " 951, " 12, p. 51,
" B. KEMPTZ, " 312, " 1161, " 13, p. 3,
" B. SCHER, " 314, " 1128, " 13, p. 10,
" MEISTER, " 319, " 1168, " 13, p. 26,
" ST. WING, " 336, " 1248, " 13, p. 83,
" MOEHLER, " 340, " 1264, " 13, p. 96,
" BRANTL, " 146, " 1101, " 14, p. 84,
" G. F., " 353, " 964, " 14, p. 67,
" PAULI, " 403, " 1433, " 15, p. 52
section 6
" SEIBERT, " 413, " 1416, " 19, p. 108,

(Examination GEFER of 21 April 1948, trans. G. .12263
E.P.12034).

Emphasis must be placed on the fact that 30000 padded vests were procured, and this number proves that they were meant for the internees as well. (Affid. S. V. B. S. B. G., Due. Exh. 351, Due. Dec. 426, book 14, p. 64)

It is due to a special intervention on the part of the defendant Dr. DUERRFELD, for instance, that many thousand pairs of foot-ras were especially procured for the prisoners.

(Affid. SCHLITT, Due. Exh. 352, Due. Dec. 116, book 14, p. 65)

For further evidence we wish to refer to the examinations in court, and statements, of former prisoners.

(Examination STRAUB of 20 April 1948, trans. G. .12129,	
" Chr. SCHNEIDER 20 Febr. " " G.P. 7526,	M426
" BOYLANDS " 20 April " " E.P. 7466,	
" NESTLER " 20 " " " E.P. 12157,	
" HIESCH " 21 " " " E.P. 11948,	
" " " " " " G.P. 12186,	
" " " " " " E.P. 11975,	
" " " " " " G.P. 12236/37	
" " " " " " E.P. 12008,	

Affid. TR. SCH. S. H., Due. Exh. 394, Due. Dec. 1422, book 19, p. 2
" DIETRICH, " 102, " 405, " 5, p. 109,
section 4.

H. Disciplinary Measures in Camp IV

The indictment speaks of inhumane punitive measures carried out in Camp IV, the existence of torture-chambers and cruel treatment inside the Camp. It contains, in this context, no direct accusations against the defendant, but only accusations against I. G. Farben members in general to have caused such cruelties or corporal punishment by reports to the SS.

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Referring to the last mentioned fact the defense wishes to draw attention to paragraph IV K further down in which the question of reports will be discussed. We shall here only compare with the statement made by the prosecution the evidence collected for the defense:

- 1.) Disciplinary treatment of the internees was, of course, in the hands of the Camp-commandant of the SS). (Affid. MAURER, Doc. Exh. 63, Doc. dec. 77, book 3, p. 123, No. 5)
- 2.) Torture-chambers did not exist in the Camp. No cruelties were committed in the Camp nor were there any arbitrary acts committed there equal to those now known to have been committed in concentration camps. They are, at any rate, not proved. Nothing of the kind ever came to the knowledge of the defendant. The witness for the prosecution SCHULHOFF says, for instance, in this connection, that in Camp Buchenwald it had been a daily occurrence for the SS to kick prisoners in the buttocks with their belts whenever one of them had to stoop down. He goes on to say that he had never seen anything of that kind happen during the 27 months he was interned in Camp IV.
(Examination SCHULHOFF of 12 November 1947, transcr. G.P. 3633, E.P. 3610/11)
- 3.) Confinement-cells and "bunkers" with standing-room only were not built by the construction-management of the I.G. Farben. Their presence was, therefore, unknown to the defendant.
(Examination Dr. DUEKRFELD of 19 April 1948, transcr. G.P. 12038/39, E.P. 11816, 1)
" HIRSCH of 21 April 1948, transcr. G.P. 12244/45, E.P. 12016,
" NESTLER of 20 April 1948, transcr. G.P. 12189/90, E.P. 11977
Affid. DISTRICH Doc. Exh. 102, Doc. dec. 405, vol. 5, p. 109/10
" FURSTENBERG " 77, " 884, " 4, p. 62, section 13
" KILLET, " 263, " 119, " 12, p. 11
" TAMB, " 422, " 492, " 4, p. 24,
" SCHERINGLY, " 103, " 403, " 6, p. 25.)

If former internees, and Jews among them, make such statements, one will have to draw the conclusion that regarding the disciplinary treatment the conditions in these labor-camps must have been very different from the well-known conditions inside concentration camps and that although there could never be a question of an influence of an outsider upon the SS, the proximity of the I.G. Farben and the fact, that this was a labor-camp, must have had a favorable influence.

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IV. The Treatment of the prisoners on the Building Site,

In the following the working conditions for internees in the plant will be discussed. Here too the prosecution raises serious accusations against the plant-management and submits prisoner affidavits to support them. We shall also discuss the few accusations which do not refer to internees but to foreign workers. The defendant Dr. DUEBENFELD has given in the witness-stand a nearly complete picture of the whole prisoner-situation on the building site, the working conditions during the various stages of construction with the sub-contractors and with the I.G. Farben and of the various efforts made by the I.G. Farben to bring about unobjectionable working conditions in spite of unyieldant collaboration with the SS and of this obvious success in ameliorating the fate of the prisoners.

(Examination Dr. DUEBENFELD of 19 April 1948, tranac. G.p. 11935-12039, E.p. 11724/27)

It cannot be considered the task of these elaborations to repeat all the counter-evidence against the statement of the prosecution which was given by the defense in its case-in-chief in detail by documents and the ~~affidavits~~ *testimony* of the defendant. It would also mean going far beyond the actual scope of this trial-brief if we would try and counter every single statement of the prosecution by referring to the respective counter-evidence in the evidence of the defense. The defense, therefore, wishes here to concentrate on a series of main accusations i.e. the affirmed inhuman system of the I.G. Farben as alleged by the prosecution and to compare it with the really social attitude of the plant-management of the I.G. Farben, and in this connection to make reference to a number of parts in documents which contain evidence for the defense, without, however, for the sake of

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brevity and clearness, taking full adv stage of the defense-evidence.

This will be done in the following 11 paragraphs.

A. General Ruling as Regards Equal Treatment of Prisoners at Work.

The prosecution claims that I.G. Farben systematically used the internees for the heaviest work and extends this accusation to include Ukrainian women.

The case-in-chief, however, shows the following:

It was the principle of the plant-management to give every worker that job in which he could make the best use of his physical powers and specialist knowledge. Consequently all workers, no matter to which category or nationality they belonged, were employed in all types of jobs in mixed groups. For this reason no less than 300 foreigners advanced to highly qualified office jobs *as employees*. Prisoners were in offices, worked as designers, chemists, commercial employees, laboratory assistants, warehouse-keepers, watchmakers, fitters, welders and mechanics as well as transport-workers and ditch diggers. Ukrainian women were employed just like German women as well in laboratories, workshops, catering establishments as with work in gardens, digging and grading work with shovels and wheel-burrows, as they were used to do when they were working on the land at home.

The responsible supervisor, Factory Officer V.JB says that the internees worked together with foreign and German workers and that their work was in no way different from that of the others.

(Exam. V.JB of 15 April 1948, trans. G.P. 11759, E.P. 11527)

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The chief chemist BLAUS who was not responsible for labor allocation said, that the prisoners were given all kinds of jobs, heavy, medium and light, according to their capability.

(Examination BLAUS, of 12 March 1948, transo. G.P. 9096, E.P. 9000)

The chief engineer of I.G. Farben, J. BERT, who visited the Auschwitz plant and gave it a thorough inspection, is sure that the internees were not employed differently from any other workers.

(Examination J. BERT of 24 March 1948, transo. G.P. 10099, E.P. 9963)

A vast number of witnesses questioned and affidavits belonging to all categories of plant employees, visitors, Government agents and firms have made similar statements.

(Examination Dr. LUBERFIELD of 16 and 19 April 48, transo. G.P. 11857/58, and 11,84, E.P. 11648/49 and 11770,

Examination SCHNEIDER of 14 April 1948, transo. G.P. 11450/51, G.P. 11640,

" BOYLENS of 20 April 1948, transo. G.P. 12151, E.P. 11944,

" TOLBERG of 17 Febr. 1948, transo. G.P. 7214, E.P. 7157,

" OEFENBERG of 21 April 1948, " G.P. 12257, E.P. 12030,

" KAUKE of 14 Jan. 1948, " G.P. 5268/75, E.P. 5242/50,

" FESLER of 20 April 1948, transo. G.P. 12195, E.P. 11984,

Dr. LUBERFIELD, G.P. Exh. 40, Due. doc. 202, Book	3, p. 1
" THUM, " 41, " 76, " 3, p. 6	
" KRIST, " 43, " 120, " 3, p. 31	
" KRIST, " 52, " 424, " 3, p. 76	
" SCHNER, " 64, " 427, " 3, p. 125,	section 2
" BOEL, " 66, " 93, " 3, p. 135	section 2
" BLAUS, " 70, " 429, " 4, p. 6	section 3
" REIBERBECK, " 72, " 869, " 4, p. 17	section 3,
" LIETRICH, " 102, " 405, " 5, p. 112/13,	section 16,
" HOENBERGER, " 114, " 281, " 6, p. 73,	
" HAEFELS, " 116, " 433, " 6, p. 103,	
" KLOTZ, " 128, " 633, " 7, p. 35,	section 3,

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Affid. ADMINISTR., Dec. Exh. 130, Dec. Dec. 665, Dec. 7, p. 43

				section 3
"	JONASCH,	"	172,	" 245, " 7, p. 76,
"	PIEY,	"	179,	" 498, " 7, p. 122,
				section 9,
"	WITCOCK,	"	193,	" 832, " 8, p. 5/6,
				section 9,
"	SCHMIDT,	"	212,	" 1040, " 9, p. 20,
"	SENZ,	"	214,	" 649, " 9, p. 26,
				section 3,
"	ARNOLD,	"	223,	" 944, " 1, p. 64,
"	WILDER,	"	226,	" 1127, " 9, p. 74,
				section 3,
"	HARTMAN,	"	241,	" 1167, " 10, p. 19,
"	QUACK,	"	248,	" 1108, " 10, p. 46,
"	ROTH,	"	249,	" 1133, " 10, p. 51,
"	KIESEL,	"	250,	" 291, " 10, p. 55,
"	HEILS,	"	260,	" 1031, " 10, p. 93,
"	STRUTZ,	"	293,	" 524, " 12, p. 46,
				section 3,
"	ALLOTTI,	"	274,	" 935, " 12, p. 49,
"	MONTEITH,	"	312,	" 1161, " 13, p. 1,

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Affid. KARL, Doc. Exh. 328, Luc. Dec. 1185, Book 13, p. 54/55,	
" NICKEL, " 330, " 1198, " 13, p. 60,	
" WAGNER, " 331, " 1102, " 13, p. 64,	
" STARK-MUM, " 339, " 1041, " 13, p. 91,	
" BEINCK, " 346, " 626, " 14, p. 18,	
" WITTIG, " 139, " 1206, " 14, p. 41,	
" HOLTHAY, " 142, " 1227, " 14, p. 56,	
" EYER, " 153, " 1210, " 14, p. 114,	
" STEINWART, " 398, " 1426, " 19, section 5,	
" VIMMER, " 401, " 1430, " 19, section 4,	
" FORTZOL, " 407, " 1417, " 19, section 2,	
" IRCHER, " 414, " 1414, " 19, section 3,	
	" 1, 111.)

Even if humane reasons would not have led up to a correct allocation of labor, practical technical and ~~human~~ ^{feasible} considerations would have, during this emergency, led up to a state where one put up a fight for every specialist and where every worker, who was at all willing to take up a specialist's job was being trained.

A group of plant employees (Arbeitsgruppe) (group foreman FISCHER who were termed "work controllers" (Arbeitskontrolliere) by the prosecution but had in reality not only the title but also the task of labor allocation consultants) ^{continuously to put} ~~was concerned with the current~~ of workmen and prisoners in their own or similar professions.

(Exh. Dr. DUBENFELD of 16 April 1948, transe. G. p. 11904, E. p. 11693)

" SCHNEIDER " 14 " " " G. p. 11641, E. p. 11401,

Affid. FISCHER, Doc. Exh. 86, Luc. Dec. 710, Book 5, p. 20, 21).

The plant made an immense effort, especially due to the influence of the defendant, to train workers from among all categories of prisoners and women in specialist professions (training workshops, welders' courses, electricians' training, masons' schools, etc.). The witness FEIGS described, from his own experience of the plant, the training of internees for highly qualified specialist jobs.

(Exh. FEIGS of 20 April 1948, transe. G. p. 12099, E. p. 11899.)

The prosecution-witness THEISTER states that he knows of training-courses for electricians, masons, fitters and welders.

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(Exam. TREISTER of 26 February 1948, transo. G.P. 7843,
E.P. 7725)

The witness GIESSEN had a look at the workshops in which the internees were trained.

(Exam. GIESSEN of 24 February 1948, transo. G.P. 7617,
E.P. 7552)

The labor allocation engineer Dion describes among other matters how 30 internees were trained as cost-clerks i.e. in office staff work so as to enable them to calculate and estimate the amount of work done by their own comrades, foreigners and Germans.

(Affid. LION, Due. Exh. 58, Due. Doc. 784, Book 3 p. 99-100 no. 3).

Similar observations were made by many witnesses and we wish to draw attention to some of them:

(Affid. REINHARDT, Due. Exh. 72, Due. Doc. 869, Book 4, p. 17, <td></td> <td></td> <td></td> <td></td> <td>section 3e,</td>					section 3e,
"	WEDIGER,	"	423,	"	419, " 4, p. 70,
"	FRICH,	"	106,	"	137, " 6, p. 23,
"	SCHNEIDER,	"	168,	"	704, " 7, p. 58,
					section 6,
"	WELFER,	"	176,	"	344, " 7, p. 100,
					section 4
"	BOHNERT,	"	211,	"	1044, " 9, p. 11,
					section 5,
"	RUST,	"	239,	"	1115, " 9, p. 129,
"	DIESEL,	"	277,	"	667, " 11, p. 76,
"	LARGENTZ,	"	312,	"	1161, " 13, p. 4,
"	OUTERRECHT,	"	333,	"	1201, " 13, p. 75,
					section 7,
"	STERN,	"	334,	"	1213, " 13, p. 77,
					section 7,
"	OTTOWITZ,	"	154,	"	1253, " 14, p. 121,
					section 2,
"	SIEBENKATHE,	"	398,	"	1426, " 15, p. 32,
					section 4,
Construction report	"	361,	"	1401,	" 17, p. 3.)

Adolescent internees, also the 14-17 year olds, were given special attention. They were, if not drafted into light work in the store-rooms and so on, mainly as a rule trained in training workshops.

Witness HÄSELER gives an impressive description of these training measures.

(Affid. HÄSELER, Due. Exh. 55 Due. Doc. 457, Book 31. G/9, sec. 4)

The witness BOYLANDS saw the adolescent prisoners in training in these workshops.

(Exam. BOYLANDS of 28 April 1948, transo. G.P. 12156,
E.P. 11947)

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Many witnesses, former internees and civilians are unanimous in their statement that no children were employed in the Auschwitz plant (i.e. of an age under 14) and that adolescents were allocated to light work as helpers or were trained in a profession.

(Exh. OFFNER of 21 April 1948, G.p. 12263, E.p. 12033/34
" BIRSCH " " " " G.p. 12241, E.p. 12013,
" WESTER 20 " " " Trans. G.p. 12196, E.p. 11896,
Affid. v. L.A. Doc. Exh. 71, Doc. Dec. 47, Book 4, p. 12, section 7,
" BIRTHICK, " 102, " 405, " 5, p. 111, " 12,
" BUELLER, " 173, " 273, " 7, p. 83, " 5,
" BERT, " 201, " 941, " 8, p. 76,
" BERNICK, " 227, " 1140, " 7, p. 82,
" B. GER, " 233, " 101, " 9, p. 107,
" BETH, " 249, " 1133, " 10, p. 52,
" BEIL, " 260, " 1031, " 10, p. 95,
" BERTZEL, " 266, " 950, " 12, p. 54,
" BERTLINGER, " 412, " 1444, " 18, p. 103, " 16
" BITTENBERGER 415, " 1415 " 19, p. 117,
" BREMER, " 414, " 1414, " 19, p. 112.)

B. Working Pace.

The prosecution claims that a murderous work pace was used in the Auschwitz plant, enforced by the general slave-driving system and brutal methods.

The case-in-chief proves the contrary:

It is true that within a period of 3 1/2 years a gigantic plant was built up. But this result was attained by thorough planning, very superior direction of building and assembly work, and a well thought out allocation of machines and human labor. The defendant declares during his examination with a certain amount of satisfaction that he succeeded in accomplishing a great technical and social task by tirelessly educating a huge personnel of 30,000 workers on the construction ^{site} until they became ^{for} willing assistants. Not force and coercion were the working system of the plant, but rewards for work well done and making people like their work.

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(Exm. Dr. DUERRFELD of 16 April 1948, transo. G.P. 11833/34
" Dr. DUERRFELD of 19 " " " E.P. 11624,
G.P. 11833/84,
E.P. 11770.)

It is, therefore, not astonishing that the former chief engineer of I.G. Farben draws the conclusion from his visits that by the ^{very} exertion of all efforts in the upper and middle group of the engineers slave driving of the lowest workers groups and the prisoners was avoided.

(Ex p. J. BENE of 24 March 1948, transo. G.P. 10115, E.P. 9980)
The ^{independent} ~~free lance~~ building consultant BOYLANDS can therefore only state that he did not come across any slave-driving and that the working pace of the internees was obviously not the same as on other building sites on which German and foreign workers were employed.

(Exm. BOYLANDS of 20 April 1948, transo. G.P. 12150, E.P. 11943).
The witness RAUS states that naturally prisoners too were made to work as the plant management had to see to it that the work was done at all just as with the Germans and the foreign workers, but that this was not done by ^{and by} ~~force~~ or even inhuman measures.

(Exm. RAUS of 11 & 12 March 1948, transo. G.P. 9071, 9096
E.P. 3977, 9000)
The witnesses H. SCHNEIDER, TER MEER, Christian SCHNEIDER and others state the same, that the working pace of the internees was a slow one and that there ^{was} ~~were~~ no slave ^{driving on the side of} ~~drivers employed by the I.G. Farben.~~

(Exm. SCHNEIDER of 14 April 1948, transo. E.P. 11431,
G.P. 11641,
" TER MEER " 16 & 17 " " " G.P. 7214, 7207,
E.P. 7157, 7151,
" Chr. SCHNEIDER of 20 February 1948, transo. G.P. 7525,
E.P. 7464,

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(Exon. GIESSEN of 24 February 1948, transe. G. p. 7604,
 " KAMPING of " " " " " E. p. 7545,
 " " " " " " " G. p. 7660,
 " " " " " " " E. p. 7593,
 " STEDAL of 20 April 1948 " " G. p. 12125,
 " " " " " " " E. p. 11923).

Among the great number of similar statements made by
 officials and representatives of sub-contractors and
 plant-employees of all categories we wish to draw atten-
 tion to the following:

(Affid. IATFELD, Due. Exh. 40, Due. Loc. 202, Book 3, p. 1;
 " THUM, " 41, " 76, " 3, p. 7,
 " SCHLOETZIG " 49, " 174, " 3, p. 44, foot. 6,
 " DICH, " 50, " 784, " 3, p. 101, " 3,
 " BRUNS, " 70, " 429, " 4, p. 7, " 7,
 " v. LAM, " 71, " 47, " 4, p. 13, " 12,
 " HEILBRONK, " 72, " 865, " 4, p. 18, " 4,
 " DUB, " 75, " 238, " 4, p. 41,
 " GZEKALL, " 80, " 621, " 4, p. 31,
 " M. SCHE, " 82, " 640, " 5, p. 55, " 9,
 " SCHMIDT-KOBIEN, " 84, " 644, " 5, p. 11, " 3-5,
 " FISCHER, " 85, " 711, " 5, p. 17, " 14,
 " J. P. EL, " 93, " 420, " 5, p. 63,
 " FRICK, " 94, " 87, " 5, p. 69, " 6,
 " DIETRICH, " 102, " 405, " 5, p. 110/11, " 7, 11,
 " SCHLOETZIG, " 105, " 134, " 6, p. 17,
 " BRICH, " 106, " 137, " 6, p. 22,
 " GHEITZ, " 113, " 266, " 6, p. 60,
 " HORNBERGER, " 114, " 281, " 6, p. 71,
 " KUFMANN, " 115, " 316, " 6, p. 83,
 " WELFEN, " 116, " 322, " 6, p. 86, " 3,
 " HOFFER, " 118, " 433, " 6, p. 102,
 " HILLN, " 120, " 442, " 7, p. 9.12, " 6, 11,
 " H. WELSE, " 122, " 461, " 7, p. 27, " 10,
 " SCHUSTER, " 132, " 695, " 7, p. 53, " 4,
 " SCHOPFELAUER, " 160, " 704, " 7, p. 58, " 4,
 " MUELLER, " 173, " 273, " 7, p. 34, " 9,
 " K. F. P., " 174, " 301, " 7, p. 92, " 9,
 " L. LEBT, " 201, " 941, " 8, p. 75/77,
 " GUGGER, " 206, " 1029, " 8, p. 95,
 " BERN, " 216, " 634, " 9, p. 37, " 6,
 " MOLL, " 225, " 1076, " 9, p. 70, " 3,
 " L. GIES, " 234, " 1019, " 9, p. 107,
 " JUTZI, " 235, " 984, " 9, p. 112,
 " HARTKORN, " 241, " 1167, " 10, p. 19,
 " SCHREIER, " 242, " 125, " 10, p. 26,
 " CLASCH, " 270, " 356, " 11, p. 41,
 " SCHROETER, " 274, " 401, " 11, p. 63,
 " DIESEL, " 277, " 667, " 11, p. 75,
 " GEBHARDT, " 285, " 349, " 12, p. 16, " 9,
 " BRAUNER, " 286, " 377, " 12, p. 17, 20,
 " BLUME, " 287, " 398, " 12, p. 25,
 " NIKSTE, " 289, " 675, " 12, p. 33, " 4,
 " LINIERMAN, " 305, " 1084, " 12, p. 88/89,
 " B. F. ITZ, " 312, " 1161, " 13, p. 1,

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(Affid. B. ECKER, Dec. 22, 314, Dec. Dec. 1128, Book 13, .8/9									
"	SAVVISBERG	"	315,	"	107,	"	13,	12, sect. 2,	
"	MEISTER,	"	318,	"	1168,	"	13,	23,	
"	DELMONCH,	"	324,	"	1179,	"	13,	41,	
"	KILL,	"	328	"	1195,	"	13,	52,	
"	SLAWING,	"	336,	"	1248,	"	13,	81,	
"	WITTIG,	"	139,	"	1206,	"	14,	41,	
"	HICHER,	"	397,	"	1425,	"	19,	27,	5,
"	DECKER,	"	414,	"	1414,	"	19,	111)	

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Numerous passages in documents submitted by the defense prove how hard the plant management tried to invent ever new means of inhibiting the often hopeless and depressed prisoners with a desire to work, satisfaction in their work, ^{by that} and vitality. The defendant Dr. DUBERFIELD was the one who started a premium-system in the Auschwitz-plant as far back as spring 1942 as can be seen especially from the Lubattel-document Exh. 2129, NI-14523, in connection with the affidavit HAESELER, Doc. Exh. 56, Doc. Dec. 460, Book 3, p. 92/93. From that time on there was research made into all possibilities and all methods were tried out: money, tobacco, leave, promotions; remission of punishment, release. Practically most effective was an allocation of food and tobacco for the same day.

We also wish here to refer to the further Lubattel-Documents Exh. 2203 and 2204 (NI 15251 and 10818). These documents cannot prove that premiums were initiated on the suggestion of the SS, as the premium-system had been introduced in the I.G. Farben long before this order was issued. On the contrary, the suggestions made to the labor-camps in this document are based on experiences made in the I.G. Farben-plant comparable to the same system of premium-distribution which had already been tried out in the I.G. Farben, and which were thus recommended. There was only this difference that the I.G. Farben- allowed the internees to draw up to 10.-RM per week (instead of up to 4.-RM) and arranged and therefore created a possibility for the internees to buy food.

One must not, however, deduce from the fact that the internees were given additional food-rations as is done by the prosecution that they were always made to work to the limit of their capacity.

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if it was found that the internees worked harder if they had additional food at noon and in the evening. This is what is termed prisoners' psychology. It is probably also impossible that the physical condition is improved even on the same day when the higher food-ration is distributed, and that this should suffice to increase output.

(Cross-examination ULLTZEL of 6 May 1948, transac. G.P.12088/50, E.P.13791/93)

The premium-coupons, the possibility to buy additional food, the double quantity of bean soup, the additional meal from the kitchen ~~for~~ the Germans and foreign workers: all this was mostly appreciated by the internees as was reported by former prisoners, I.G.Farben- and sub-contractors employees alike:

(Exh.F STLER of 20 April 1948, transac. G.P.12186, E.P.11974,
 " HILSCH " 21 " " " G.P.12235, E.P.12008,
 " BEFFER " 21 " " " G.P.12266, E.P.12086,
 Affid.v.L.M., Doc. Exh. 57, Doc. Exh. 48, Doc. 3, p. 96, section 1,
 " LION, " 58, " 784, " 3, p. 100, " 5,
 " DAUB, " 61, " 1027, " 3, p. 112/113 " 3, 5,
 " REILBERG BOCK, 72, " 47, " 4, p. 18, " 5,
 " DAUB, 75, " 238, " 4, p. 42, " "
 " SCHREIDER, 2, " 651, " 1, p. 6, " 3,
 " ROELIGSS, 423, " 419, " 4, p. 72, " "
 " CHRIST, 112, " 247, " 6, p. 63, " 11,
 " WITCHELUS, 131, " 684, " 7, p. 48, " 2,
 " JONASCH, 172, " 245, " 7, p. 7, " "
 " WOLTER, 226, " 1127, " 9, p. 74, " 5,
 " BEUNYER, 132, " 1804, " 9, p. 100, " "
 " E. RTHLEF, 241, " 1167, " 10, p. 23, " "
 " KIESEL, 250, " 231, " 10, p. 57, " "
 " ERANSBETTER, 275, " 431, " 11, p. 67, " 4,
 " ZEH, 310, " 907, " 12, p. 104, " 5,
 " LINDENANN, 305, " 1084, " 12, p. 80, " "
 " FETZOLD, 407, " 1417, " 13, p. 71, " 4,
 " KILSCHESKI, 394, " 1422, " 13, p. 6, ")

C. Amount and kind of work done by the Prisoners.

The prosecution claims that the internees were made to work long hours and were given very ~~exhausting~~ ^{exhausting} work to do. Nothing is more untrue, as has been proved by the evidence. Witnesses for the prosecution have had to acknowledge as true the fact

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that the internees worked shorter hours than other workers. Hours of work on the building-site amounted to 53-56 per week. In winter and on frequent foggy days the internees were able to leave their camp only if the fog cleared up sufficiently. The prosecution witness TUBER had to admit that working hours for the internees were from 6.30 - 15.30 in summer and 7.30 - 15.30 in winter not considering the breakfast and noon-breaks.

(Exh. TUBER of 7 November 48, transe. G.p. 3561, E.p. 3540.)

The witness STRUBEL ^{states} ~~admitted~~ that visitors to the sub-contractors ^{pointed out smilingly to the witnesses} ~~had very remarks about the internees who were just standing around and talking.~~

(Exh. STRUBEL of 20 April 1948, transe. G.p. 12119-125, E.p. 11918-923).

Witness ^{plant inspector} ~~factory officer~~ VAJE drew attention to the fact that the amount of work done must have necessarily been small as the greater part of the workers were employed in work which had hitherto been unfamiliar to them.

(Exh. VAJE of 15 April 1948, transe. G.p. 1176, E.p. 11527/28)

As further proof for the number of working-hours, for the "working pace of the internees" which had already become a byword (and which meant a very leisurely one) and the ^{reached} ~~lower~~ ^{up to the} ~~limit of their~~ ^{physical fitness and the reasons for which} were understood by the chiefs of the building site and their assistants to be psychological, we draw attention to only a few more statements and affidavits.

(Exh. SCHNEIDER of 14 April 1948, transe. G.p. 11641, E.p. 11401,
" CEFFNER " 21 " " " G.p. 12264, E.p. 12035;
" KRAUCH " 16 Jan. " " G.p. 5416, E.p. 5387,
" HIRSCH " 21 April " " G.p. 12241, E.p. 12013,

Affid. MUELLER, Due. Exh. 31, Due. doc. 630, Book 4, .86, section 6,
" KUFFMANN, " 107, " 169, " 6, .33,
" GROSSCH, " 115, " 849, " 8, .60, " 6,
" HENIGRE, " 227, " 1140, " 9, .79,
" SCHNEIDER, " 242, " 125, " 10, .27,
" KIESEL, " 250, " 231, " 10, .57,
" JEGGER, " 251, " 979, " 10, .85,
" RILLET, " 283, " 119, " 12, .10,

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Fried. CARIST, Due. Jan. 258, Due. Dec. 553, Book 12, p. 63,	
# 248N, " 310,	# 507, " 12, p. 104, section 5,
# D. F. SWITZ " 312,	" 1161, " 13, p. 1,
# SP. 218N, " 316,	" 1152, " 13, p. 20, 3,
# HESS, " 320,	" 1166, " 13, p. 27,
# SCHULT Roll, 321,	" 1170, " 13, p. 30,
# V. GEBER, 331,	" 1102, " 13, p. 64,
# OTTOWITZ, 154,	" 1253, " 14, p. 121, 2,
# PAULI 403,	" 1433, " 19, p. 51, 1,
# H. M. KE, 406,	" 1436, " 19, p. 68, 8,
# KOEHLER, 416,	" 1421, " 19, p. 122, 7,
# MITTAGEIER, 415,	" 1415, " 19, p. 115.)

The defendant DURASOIN had worked out according to the established technical rules the absolute amount of work done by the internees as compared with that done by German workers. It amounted in the various professional categories to between 0 to 100% and 125, on the average 55%.

(Exam. Dr. DUNSFELD of 15 .,ril 1948,transo.C. .12005
B. .11774-75,
" SCNEIDEN " 14 " " " C. .11641,
C. .114-1)

It is also confirmed by the former prisoner MEETLER that the output was on an average anyway slightly over 50%.

(Exam. TESTER of 20 April 1948, trenso. G. 12203, L. 11941/92)

One of the many forms
The assessor ~~in~~ ^{at} ~~the~~ ^{the} ~~same~~ ^{same} ~~place~~ ^{place}, very positively states
in his cross-examination that the output of the internees
of 50% was not all that the internees could actually manage
but that the internees worked voluntarily for and without
coercion or else they would not have Sunday-work as well.

(Exon. 6 EFFLER of 20 April 1948, trans. G., 12268, B., 12038/39)

The following witnesses confirmed this statement on the whole:

NAME	DATE	NO.	DATE	NO.	DATE	NO.
FRID, SCHNEIDER, DUE, WAX.	2, Dec. 651,	1, 2, 14/15, sect. 7				
" BLIGER,	" 423,	" 419,	" 4, 2, 69,			
" MUELLER,	" 81,	" 630,	" 4, 1, 87,			6
" DICK,	" 52,	" 783,	" 4, 2, 57,			6
" HANFELS,	" 118,	" 433,	" 6, 2, 102,			
" LUECKEL,	" 245,	" 837,	" 10, 2, 37,			3
" QUACK,	" 248,	" 1108,	" 10, 2, 48,			
" ROTH,	" 249,	" 1133,	" 10, 2, 51,			

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Affid. RED BENT, Due. Exh. 282, Due. Dec. 1229, Book 11, p. 113, sect. 20,
 " BREITWAL, " 296, " 950, " 12, p. 54,
 " BURG, " 297, " 951, " 12, p. 55,
 " SALVENBERG, " 315, " 1007, " 13, p. 13, 3,
 " KORTHEIM, " 327, " 1191, " 13, p. 50, 4, 5,
 " KARL, " 328, " 1195, " 13, p. 52,
 " BLUMHIL, " 332, " 1094, " 13, p. 68, 5,
 " BICKEL, " 337, " 1425, " 19, p. 26, 3,
 " MITTERMEIER, " 415, " 1415, " 19, p. 116,

Exh. STRAHL of 20 April 1948, trans. G. p. 12118, B. p. 11917).

It may be seen from the following remarks made by experts how the internees were allowed in a very sensible way to participate in piece-work rates even if they reached only 50% of the output of German workers.

(Affid. HAESELEIN, Due. Exh. 56, Due. Dec. 460, Book 3, p. 93, sect. 4
 " v. LON, " 57, " 48, " 3, p. 96, " 2
 " LICH, " 58, " 784, " 3, p. 100, " 3.)

It is also a fact that the work-and output-sheets could not have served the purpose of reporting individual internees in case of insufficient output for punishment, but referred only to the output of the whole detail.

(Affid. FISCHER, Due. Exh. 85, Due. Dec. 711, Book 5, p. 16/17, sect. 13/14
 " ROTH, " 249, " 1133, " 10, p. 51,
 " BREKEL, " 296, " 950, " 12, p. 54.)

The prosecution witness TREISTER too states that 50-60% average output was considered sufficient for the whole detail to prevent them from getting into difficulties.

(Exh. TREISTER of 26 February 1948, trans. G. p. 783, B. p. 7721/2).

Finally attention must be drawn to the fact that cut-and-out slave-driving could never have existed if whole prisoner details reportedly asked to be allowed to work on Sundays.

(Exh. NESTLER of 20 April 1948, trans. G. p. 12201, B. p. 11991,
 Affid. LAUB, Due. Exh. 75, Due. Dec. 238, Book 4, p. 42,
 " BRICH, " 106, " 137, " 6, p. 24,
 " KLAUFELD, " 107, " 169, " 6, p. 33,
 " ROHMESBERGER, " 114, " 281, " 6, p. 72,
 " SCHMILT, " 221, " 917, " 9, p. 56, section 5,
 " UNTERSTERN, " 228, " 1088, " 9, p. 88,

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Affid.	LUECHEL,	Doe.	Exh.	245,	Doe.	Doc.	837,	Book	10,	p.	37,	sect.	8,	
"	NOTE,	"		249,	"		1193,	"	10,	p.	53,			
"	KIESEL,	"		250,	"		231,	"	10,	p.	57,			
"	LO SCH,	"		264,	"		173,	"	12,	p.	14,		3,	
"	COLLET,	"		294,	"		935,	"	12,	p.	53,			
"	FRITZ,	"		293,	"		1005,	"	12,	p.	67,			
"	VEDER,	"		303,	"		1021,	"	12,	p.	82,			

D. The carrying of cement sacks.

The carrying of cement sacks which is inevitable with constructions work must be discussed because the Prosecution in almost all affidavits tries to prove ^{with this work} that working conditions in the Auschwitz plant were inhumane. It places this work together with the unloading of stones and cable laying, which are to be discussed in the next two sections, so much into the foreground that it must seem as if the construction of the plant had consisted almost exclusively of these activities.

The witness for the Prosecution WOLLMER testifies in this connection on the witness-stand that the cement generally had to be carried a distance of 300 to 500 meters. (Germ. Tr. p. 3627, Engl. Tr. p. 3704). As, as well as other Prosecution witnesses, asserts that this work had to be carried out on the double.

The Defense, on the other hand, refers to the detailed statements made by the experts FAUST and FEIGS who had been placed at the disposal of the Prosecution for cross-examination, as well as to many other witnesses, a number of whom have been mentioned below. A summary of these testimonies gives the following picture:

Cement sacks were carried a distance of about 10 to 50 meters. The Prosecution witness DAVISON believes the distance had been about 50 yards. (Examination of 14 November 1947, Germ. Tr. p. 3843, Engl. Tr. p. 3817). The largest part of the cement was transferred from the railroad trucks directly into the trucks of the narrow gauge railroad standing close by lestly it was conveyed directly into the modern concrete plants without

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being touched by human hands. The railroad not work with 50 miles of standard gauge and 90 miles of narrow gauge tracks was so dense that the distance asserted by the witness WOLLHEIM is technically absurd and impossible. The unloading of cement constituted 0.2 per cent of the work connected with building up the plant and thus also of the prisoners' work (since all categories of workers participated in this work). This work was not carried out on the double! An especially rigorous Kops may have hurried along the prisoners subordinated to him in a far-off building site: Double-time was neither ordered nor would it have been tolerated if it had occurred and come to the knowledge of the plant management.

(Affid. FAUST/NIEMANN, Doc. Exh. 240, Doc. Dec. 1114, Book 10, p. 1, Exam. FEIGS of 20 April 1948, Transc. G. p. 12099/12103,

" STRAUB, L "	" "	" "	" "	" G. p. 12144, E. p. 11938,
" VAJE 15 "	" "	" "	" "	" G. p. 11760, E. p. 11528,
" OFFNER of 21 "	" "	" "	" "	" G. p. 12260, E. p. 12031,

Affid. SCHLÖTTIG, Doc. Exh. 49, Doc. Dec. 174, Book 3, p. 44, section 6,

" HOESCH, "	" 87,	" 722,	" 5, p. 26,	7,
" BRAUSWETTER "	" 88,	" 744,	" 5, p. 33/34,	3,
" Dr. EGGERT, "	" 89,	" 763,	" 5, p. 42,	7,
" WINKLER, "	" 224,	" 1023,	" 9, p. 68,	
" VERNICKE, "	" 227,	" 1140,	" 9, p. 81,	
" KLUFMANN, "	" 236,	" 985,	" 9, p. 118,	5,
" HANTYMAN, "	" 241,	" 1167,	" 10, p. 20,	
" TRETTAR, "	" 243,	" 1013,	" 10, p. 30,	
" KIEBEL, "	" 250,	" 231,	" 10, p. 59,	
" WOELFER, "	" 259,	" 1024,	" 10, p. 91,	7,
" SELBERT, "	" 282,	" 1229,	" 11, p. 115/116,	21,
" GERIST, "	" 298,	" 953,	" 12, p. 64,	
" LINDENMANN, "	" 305,	" 1084,	" 12, p. 87/90,	
" BARNWITZ, "	" 312,	" 1161,	" 13, p. 2,	
" MEISTER, "	" 319,	" 1168,	" 13, p. 24,	
" SCHMIDT, "	" 321,	" 1170,	" 13, p. 31,	
" LEHZELOCH, "	" 324,	" 1179,	" 13, p. 42,	
" EORN, "	" 326,	" 1188,	" 13, p. 47,	9,
" JUCKEM, "	" 329,	" 1196,	" 13, p. 57/58,	
" NICKEL, "	" 330,	" 1198,	" 13, p. 61,	
" DENTINGER, "	" 412,	" 1444,	" 19, p. 99,	2,
" SEIBERT, "	" 413,	" 1416,	" 19, p. 106.)	

E. Cable laying.

Cable laying likewise belongs to the kind of work designated as murderous by the Prosecution and is to serve as further chief evidence for the

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"inhumane system of the plant".

With the aid of lantern slides this subject was discussed by the defendant who is familiar with cable laying from his experiences as a technical engineer as well as as a worker and is in a position to estimate it, and also by three other experts. It is thus not necessary in this connection to describe the working method which according to established rules of technical engineering is the same all over the world. The weights of the cables are fixed and the distance from man to man has been confirmed by numerous witnesses. The Prosecution witness HILL, as well, confirms the distance of about one yard (Proc. Exh. 1495, NI-11704, Vol. 78, German p. 114, Eng. p. 116, sec. 2). In view of these facts an inhumane load and a collapse during this work are out of the question, if about 25 to 30 lbs fall to the share of one man, which are to be pulled across coils, seldom to be carried on one's shoulders. At any rate, there cannot exist an inhumane system here, if experts designate this work as easy, surely, however, as "not hard". Frequently even the apprentices of the training shops are employed in such work, since only temporarily a great number of workers are required at the same time in cable laying. As for the rest, it has been established that annually on an average only 50 to 60 prisoners were required for cable work of whom again only the tenth part had to be employed in laying heavy cables.

(Exh. Tr. DUERRFELD, of 16 April 1948, G. Tr. p. 11837, E. Tr. p. 11628)

Picture-Exh. 133, Doc. Dec. 1322-23,

Affid. KLOPP, Doc. Exh. 247, Doc. Dec. 991, Vol. 10, p. 43,

" DIESEL " 405, " 1435, " 19, p. 60,

Exh. STR. DEL of 20 April 1948, Ger. Tr. p. 12122-12125,

Engl. Tr. p. 11920-23,

" BOYAL S " " " " G. Tr. p. 12156,

E. Tr. p. 11948,

Affid. SCHNIK, Doc. Exh. 212, Doc. Dec. 1040, Book 9, p. 21,

" WOLTER, " 226, " 1127, " 9, p. 75; sect. 11

" WERNICKE, " 227, " 1140, " 9, p. 81,

" EUMEYER, " 232, " 1004, " 9, p. 100,

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Affid. QUACK, Doc. Exh. 248, Doc. Dec. 1108, Book 10, p. 49,	
" RATH, " 249, " 1133, " 10, p. 52;	
" KUELLER, " 269, " 341, " 11, p. 30;	
" SCHULT, " 301, " 1012, " 12, p. 75;	
" KATZ, " 312, " 1161, " 13, p. 2;	
" MEISTER, " 139, " 1168, " 13, p. 24;	
" SCHMIDT, " 321, " 1170, " 13, p. 31;	
" SEIBERT, " 413, " 1416, " 19, p. 107).	

F. Unloading of stones.

The third type of work demanded by I.G. Farben from the prisoners, which is severely criticized by the Prosecution, is the unloading of bricks.

With the aid of supporting evidence the Defense establishes as follows: a brick is standardized and weighs about 7 lbs. It is an established rule in construction work that normally a worker throws 2 stones at a time to his fellow-worker over a distance of one to two yards. The Prosecution witness TREISER admits that the prisoners over a distance of about 1 meter, that is, standing closely together, passed on the stones one at a time.

(Exh. TREISER of 26 February 1948, G.Tr. p. 7842, Encl. Tr. 7729).

This was the rule and it was tolerated because it was known that a large number of the prisoners were not accustomed to manual labor.

(Exh. OFFNER of 21 April 1948, trans. G.T. 12260, E.p. 12031/32, Affid. HARTMANN, Doc. Exh. 241, Doc. Dec. 1167, Book 10, p. 19,

" MEISTER, " 319, " 1168, " 13, p. 24;
" SCHMIDT, " 321, " 1170, " 13, p. 31;
" OTTO, " 154, " 1253, " 14, p. 122, sec. 2
" UMLER, " 401, " 1430, " 19, p. 46, 5
" SEIBERT, " 413, " 1416, " 19, p. 106).

G. The vigorousness of the prisoners work.

In this section the result of the six previous sections is to be summarized. The assertions of the Prosecution concerning the pace of the work, the amount of work, individual working duties and, in particular, the assertion of unequal distribution of the load of the work

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on Germans, foreign labor and prisoners have been refuted. This section is now to show that the result cannot be different in view of the extensive introduction of machines to the construction site. One witness after the other has praised the high standard of technical engineering on this building site and experts have testified that the Auschwitz plant was the most modern and most extensively mechanized building site.

(Exam. STEINKOPF of 1 March 1948, transo. G.D. 8231, E.D. 6158/9,
" ROYALMS " 20 April " " G.D. 12157, E.D. 11948/9
" FEIGS " " " " G.D. 12095, E.D. 11894,
" BRAUS " 11 March " " G.D. 1073, E.D. 8578/9,
" GIESSEN " 24 February " " G.D. 7615, E.D. 7551,
" KLEIDING " 24 " " " G.D. 7661, E.D. 7594,
" HUEPFISCH " 9 March " " G.D. 8564, E.D. 8783,
" KRAUSE " 16 January " " G.D. 5416, E.D. 5387,
" TER MEER " 16 February " " G.D. 7209, E.D. 7152/3,
Affid. SCHUBER, Due. 64, Due. Dec. 427, Book 3, E.D. 125, section 2,
" SCHUSTER, " 132, " 695, " 7, E.D. 54, " 7,
" ROSENBERG, " 170, " 138, " 7, E.D. 60,
" FLUST, " 239, " 1115, " 9, E.D. 120,
" SCHWEIZER, " 242, " 125, " 10, E.D. 26,
" MEISTER, " 139, " 1168, " 13, E.D. 25.)

It is true, an English prisoner-of-war as witness for the Prosecution asserted in reply to the questions of the Presiding Judge, that electric machines were not used in this plant.

(Exam. HILL of 14 November 1947, G.Tr. 3873, E.Tr. 3848).
But the Prosecution has ~~substantiated~~ ^{disputed} with the Defense that the Auschwitz plant actually was highly mechanized. The Prosecution only questions whether the prisoners also benefited by the mechanization.

To this question the Defense wishes to raise the counter-question whether according to the evidence furnished under section IV in view of the complete intermixture of the employees, the close co-operation of prisoners, Germans and foreign workers, it can at all still seem conceivable that not all workers simultaneously benefited by this mechanization.

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Is it really imaginable that if, for instance, a group of 10 men, composed of Germans, Frenchmen, prisoners and Poles, jointly mount a machine with the help of electric cranes, hydraulic lifting machines, electric bore machines and pneumatic tools, the prisoner has the hardest job? Is it conceivable that in the case excavation work with a dredger using conveyor belts to transfer the earth into a train, the prisoners carried out harder work than the Poles, Eastern workers or Germans of the same working team? That prisoners and civilians participated in the same manner in purely transportation work and loading work, has already been discussed sufficiently. The picture material submitted during the direct examination also shows that the prisoners were employed with cranes and lifting machines by which they, as a matter of course, also benefited during their work.

On the basis of the overwhelming evidence material of the defense only this can be the truth. Without counting individual cases in which individual prisoners may have had to suffer from unreasonable superiors or bosses, it can be established in general that the supervisory workers were most heavily taxed. These were, however, mostly Germans, to a very small extent also Poles, Belgians and Frenchmen. These had to bear the responsibility for the details, had the longest working hours and had to join the work everywhere in their group by training and assisting. In general the prisoners certainly were not given the harder work and it is absolutely sure that there existed no system for assigning heavy work to the prisoners. On the contrary, the system adopted by the plant was to let every worker carry out the work which corresponded to his technical and physical

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ability. Although the prisoners were not expected to do the hardest work, yet they had doubtlessly the hardest lot; since they were prisoners in the hands of freedmen rulers. This was also known to the plant management and this was the reason why their smaller output was tolerated.

(Exam. Dr. DUERRFELD of 19 April 1948, Transc. G.P. 11982-11985, *

"	CEFFNER	" 21 "	" "	" "	G.P. 12258, 12260,
					E.P. 12030, 12031/
					34,
"	BRUS	" 11 March "	" "	" "	G.P. 9074,
					E.P. 8979,
"	HILSCH	" 21 April "	" "	" "	G.P. 12242,
					E.P. 12014,

Affid. RISS, Doc. Exh. 35, Doc. Dec. 735, Book 2, p. 37, sec. 6,
" FESCHEL, " 54, " 830, " 3, p. 35, " 11,
" BURGHUS, " 131, " 684, " 7, p. 48, " 2/II,
" LENZ, " 192, " 702, " 8, p. 43, " 5,
" MEYER, " 222, " 878, " 9, p. 60, " 5,
" THUS, " 261, " 1123, " 10, p. 98, "
" KILPATRICK, " 280, " 824, " 11, p. 39/1, 8, 10,
" BERN, " 276, " 625, " 11, p. 72, 3,
" KORTENSHIN, " 327, " 1191, " 13, p. 49, 3.)

When the prosecution witness VOLLMER to the question as to whether his work as welder had not been easier than carrying cement, answers "no, it was work of the heaviest kind" then this only shows how subjective the estimation of the heaviness of work is.

(Affid. VOLLMER, Exh. 1476, VI-9807, Vol. 75, Exh. 1, p. 108, Exam. VOLLMER of 13 November 1947, G.Tr. 1.3729, E.P. 3704).

Out of the abundance of evidence material showing that no prisoners were seen breaking down in the plant under the load of their work, we wish to refer to a few passages only.

(Exam. SCHWEILER of 14 April 1948, transc. G.P. 11654, E.P. 11604,	
" FESTLER " 20 " " " G.P. 12157, E.P. 11987,	
" PEFFER " 21 " " " G.P. 12258, E.P. 12030,	
" FEIGS " 20 " " " G.P. 12105, E.P. 11904,	
" BOYLANDS " 20 " " " G.P. 12151, E.P. 11944,	
" GIESSEN " 24 February " " G.P. 7615, E.P. 7551,	
" TER MEER " 16 " " " G.P. 7215, E.P. 7157/	
	58,

Affid. GLITSMAN, Doc. Ex. 76, Doc. Dec. 259, Book 4, p. 50,
" FURSTENBERG " 77, " 884, " 4, p. 58, sec. 6,
" LICH, " 92, " 783, " 5, p. 57, 6,
" HECHT, " 110, " 242, " 6, p. 49,
" WELFEL, " 116, " 322, " 6, p. 37, 3,
" BURGHUS, " 131, " 684, " 7, p. 48, 3,
" SCHUSTRE, " 132, " 655, " 7, p. 54, 8,

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ffid. SCHWENKHAUER, Doc. Exh. 168, Luc. Dec. 704, Book 7, p. 58, sec. 5	
" SCHNIX, " 212, " 1040, " 8, p. 20,	
" HACKEN-SCHMIDT, " 219, " 812, " 8, p. 49, " 5	
" REIM, " 220, " 862, " 9, p. 52, " 12	
" MEYER, " 222, " 878, " 9, p. 60, " 5	
" BINKLER, " 224, " 1023, " 9, p. 67, " 4	
" WALTER, " 226, " 1127, " 9, p. 74, " 4	
" KNEBELER, " 231, " 1083, " 9, p. 97, " 3	
" MEUMAYER, " 232, " 1084, " 9, p. 101, " 3	
" MUELLER, " 233, " 996, " 9, p. 106, " 3	
" LAUR, " 256, " 954, " 10, p. 88, " 4	
" GLBITZ, " 257, " 963, " 10, p. 83, " 4	
" JAEGER, " 258, " 979, " 10, p. 87, " 5	
" WELFER, " 259, " 1024, " 10, p. 90, " 5	
" HOCHENBERGER, " 302, " 973, " 12, p. 79, " 4	
" JONASCH, " 304, " 881, " 12, p. 83, " 4	
" LIEBEMANN, " 305, " 1084, " 12, p. 89, " 4	
" AFFEL, " 306, " 943, " 12, p. 92, " 4	
" KRATZSCH, " 307, " 992, " 12, p. 94, " 2	
" KREBSWITZ, " 312, " 1161, " 13, p. 1, " 5	
" ROBLIG R, " 325, " 1180, " 13, p. 44, " 5	
" BLUMENEL, " 352, " 1094, " 13, p. 68, " 5	
" BICHNER, " 357, " 1625, " 19, p. 27, " 6	
" BLUMENEL, " 404, " 1434, " 15, p. 57, " 3.)	

H. accidents in the plant

The Prosecution has asserted that due to the poor installations of the plant a tremendous number of prisoners met with accidents and that the plant officials did not even attend to the prisoners.

The true picture is different: There exist contemporary documents which clearly show that a thorough accident prevention service existed in which also the official supervising officers participated at that time.

(Doc. Exh. 51, Luc. Dec. 1064, Book 3, p. 53 ff.
50, 1067, 3, 46,

ffid. DETMERS, Doc. Exh. 40, Luc. Dec. 202, Book 3, p. 1

Exon. V. 15 of 15 April 1940, trans. G. 1, 11761, E. 1, 11529,

ffid. IRCHSTEIN, Doc. Exh. 355, Luc. Dec. 1432, Book 19, p. 16.)

In addition, plant employees who were concerned with these questions in an ^{ex officio} ~~extra-official~~ capacity in the plant also commented on this matter.

(ffid. PASCHER, Doc. Exh. 54, Luc. Dec. 850, Book 3, p. 61-63, sec. 3-5,

" BRACKE, " 400, " 1428, " 19, p. 40,

" KRIST, " 45, " 126, " 3, p. 33,

" KRIST, " 52, " 424, " 3, p. 76,

" KSTHAUS, " 53, " 1257, " 3, p. 73,

" DENTINGER, " 412, " 1444, " 19, p. 101, 4-7).

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Although it is established that the SS exclusively was in charge of the care and treatment of prisoners who had met with an accident and that there even existed a strict directive by the SS prohibiting taking any prisoner to the plant first-aid station but to leave the care and removal to the SS, yet not one of the eyewitnesses' reports shows that the prisoners who had met with an accident ever had been denied the regular first-aid attention, but quite the contrary.

(Exon.)	WESTER	of 20	April 1948,	transc.	G.P. 12201, E.P. 11991,	
"	HIRSCH,	" 21	"	"	G.P. 12241, E.P. 12013/14,	
"	OFFNER	" 21	"	"	G.P. 12261, E.P. 12039,	
"	BRUNS	" 12	March	"	G.P. 9083, E.P. 8989,	
"	FRIGS,	" 20	April	"	G.P. 12106, E.P. 11905/6,	
"	W. Y. LINS	" 20	"	"	G.P. 12150, E.P. 11943,	
"	J. K. E.	" 24	March	"	G.P. 10116, E.P. 9980,	
"	GIBSEN	" 24	February	"	E.P. 7607, E.P. 7543,	
affid.	KILDESTER,	Doc. Exh. 130, 203, 200, 669, 667, 7, 1, 45, 800, 5,				
"	H. L. T. M. S.	" 241,	"	1167,	" 10, 1, 22,	
"	W. Y. H.	" 249,	"	1133,	" 10, 1, 52,	
"	H. W. D.	" 260,	"	1031,	" 10, 1, 94,	
"	W. Y. H.	" 254,	"	927,	" 10, 1, 76,	6,
"	L. W. D. L. W.	" 305,	"	1084,	" 12, 1, 84,	
"	E. W. S. I. T. Z.	" 312,	"	1161,	" 13, 1, 3,	
"	S. C. H. I. T.	" 321,	"	1170,	" 13, 1, 31,	
"	J. O. S. N. E.	" 322,	"	1174,	" 13, 1, 35,	4,
"	S. T. E. R.	" 333,	"	1213,	" 13, 1, 76,	5,
"	H. W. T. R. Y.	" 142,	"	1227,	" 14, 1, 55,	
"	B. L. U. M.	" 358,	"	1155,	" 15, 1, 40,	
"	S. T. E. R. K. A. T. H. E. N.	" 398,	"	1426,	" 15, 1, 33,	8,
"	O. L. I. P. E. R.	" 401,	"	1430,	" 15, 1, 46,	6,
"	E. S. I.	" 402,	"	1431,	" 19, 1, 49,	4,
"	E. S. T. W. A. I. N.	" 404,	"	1434,	" 15, 1, 50,	5.)

All these testimonies characterize the efforts on the part of the plant to prevent accidents and to help those who had met with such. The SS claiming to have the sole right, however, prevented the plant first-aid service from taking full effect. Neither did the SS follow the reporting system customary in the plant. The consequence was that the plant had no complete insight into the number of accidents among prisoners, even less than with regard to the personnel of the sub-contractors. The latter, likewise, were not legally bound to report the accidents, they did so, however, for the greatest part at the request of the plant. Since, in addition,

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persons who had met with lesser accidents had to stay with their detail if the SS labor allocation office in view of their condition did not regard it as necessary to take them off immediately or in the course of the day, - they were spared further work - it happened that in the evening prisoners marched back to the camp supported by their comrades. This however happened in the case of other workers also during the day or at the end of the work as it does on other building sites. At any rate, the plant management was not informed of any alarming or striking frequency of prisoner accidents. An abnormal number of fatal accidents cannot be inferred from the case-in-chief or from the SS death roll from camp IV submitted as rebuttal document, (MI-15255, Proc.Exh.2262) although the case-in-chief has established that the prisoners showed very little discipline with regard to the plant regulations for accident prevention.

(Affid. ARIST, Luc.Exh.52, Doc.Doc.424, Vol.3, p.76).

These statements are, however, in strictest contradiction to the assertions made by the Prosecution. The building of the chimney is alleged to have cost the lives of 2000 prisoners in the plant. The value of such affidavits which in addition was admitted to have been made from hearsay, is shown by the calculation of the competent construction manager stating that every chimney worker during the entire building period would have had to fall down four times a day if this assertion had been true. In reality, neither the construction manager nor the plant manager were informed of even one single accident during the building of this chimney.

(Affid. AFFRIZ, Proc.Exh.1465, MI-7184, Vol.75, Engl.p.71, Exan.Dr.DUERRFELD, of 19 April 1948, G.Tr.p.12031/32, S.Tr.p.11801/2, Affid.FRAEZ, Luc.Exh.163, Doc.Doc.1165, Vol.15, p.43).

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If a witness saw a prisoner who had met with a fatal accident lying in the place of the accident for several hours, then we wish to point out that in case the course of the accident had to be established by the investigation authorities the dead man had to be left at the place of accident untouched until the criminal police had made the necessary inquiries.

(Affid. FESCHEL, Doc. ex. 54, Doc. No. 350, Vol. 3, p. 34, sec. 8).

J. The treatment of the prisoners in the plant.

The alleged ill-treatment of the prisoners and foreign workers by I.G. Farben officials constitutes a large part of the charges made by the Prosecution. The Prosecution wishes to make one believe that the methods of the concentration camp close by the plant had also been adopted on the building site of this plant.

The case-in-chief of the Defense refutes this thesis completely. As a matter of fact, at the beginning a number of excesses took place on the building site among the prisoners themselves as well as on the part of the Nazis, and temporarily also on the part of the SS guards. There is no doubt about it that it was thanks to I.G. Farben that such brutal acts were nipped in the bud as quickly as possible.

As a matter of fact the defendant Dr. DUEHRFELD was not competent as construction and assembly manager on the building site until October 1942. He was, therefore, not directly concerned with the shortcomings in the treatment of the prisoners which had appeared at the beginning, yet during his visits to the building site together with the competent construction manager JUST since the spring of 1941 he intervened energetically

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and successful y. After moving into camp IV in October 1942, to begin with, a few excesses took place due to the complete change of the guards and the prisoners and Kapos. However, also in these cases energetic measures were taken so that in the years 1943 and 1944 these occurrences were only quite rare accidental acts of misconduct of individual rowdies. These offenses as well were punished in each case that became known.

The historical development in brutal acts by prisoners, Kapos and SS guards can be clearly seen from the evidence submitted by the Prosecution itself.

August 1941: "We have called the attention of the concentration camp officials to the prisoners' being severely beaten by the Kapos on the building site. I.G. Forben, therefore, requested that these beatings be stopped."

(Weekly report II of 5 August 1941, Pros. Exh. 1985, PI-December 1941: after acts of ill-treatment had been ¹⁴⁵⁴³ quoted, it says; "We shall once again talk to the Kommandant about this matter."

(Weekly report 30 of 21 December 1941, Pros. Exh. 1988, PI-14556)

July 1942: "The various acts of ill-treatment were discussed. They are absolutely condemned by the camp administration and there exist strict orders to abstain from all such measures and other measures which may undermine the prisoners' working capacity."

(Weekly report of 9 July 1942, Pros. Exh. 1986, PI-14512)

This proves obviously that the concentration camp administration bore in mind certain ^{understanding} ~~assurances~~. Even though they might have been more of an economic nature, yet the building management could hope in view of such assertions that the SS would do everything necessary for the prevention of brutal acts of any kind.

That the plant administration could trust these promises of the concentration camp management is shown by the existence of corresponding regulations by highest SS offices.

(Order by the Chief of the Economic and Administrative Main Office, Pros. Exh. 375, Pros. Doc. 1544, Vol. 16, p. 2(7)
Swearing in of SS man JOCHIM, Pros. Exh. 67, Pros. Doc. 374b, Vol. 15, p. 135

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December 1942: Ill-treatments of prisoners are not involved here, but in a weekly report reference is made to individual cases in which civilian workers were beaten. In the same note reference is made to the firm SCHULTZ's having been reported to the trustee for punishment. In addition, the report shows that new corporal punishment was also prohibited by the plenipotentiary general for labor allocation and finally it may be seen that this ban actually was followed on the building site.

(Weekly report 80/81 of 13 December 1942, Pros. Exh. 1987, FI-14552)

There is no reference to any beating in any weekly report from December 1942 till the spring of 1944:

March 1944.

The weekly report 146/47 of 19 March 1944 is quoted by the defendant Dr. DUERRFELD on the witness stand. The fact that a "special case between a foreman and a Jewish prisoner" is mentioned which causes a special discussion between the commandant of camp IV and the plant, is the best proof for the rarity of such an occurrence. In addition, the assault involved had not even been carried out but only threatened.

(Dr. DUERRFELD examination of 19 April 1948, G.Tr. p. 11985/6, E.Tr. p. 11772).

With regard to the interpretation of the construction manager's personal remarks in the weekly reports quoted, the author of the weekly reports, the construction manager F. UST, himself makes statements on the witness stand. (F. UST examination of 6 May 1948, G.Tr. p. 14325, 14327, 14333/37, E.Tr. p. 14018, 14020, 14028/34)

With regard to how the weekly reports came about and with regard to the lack of the defendant's responsibility Dr. DUERRFELD made statements on the witness stand.

(Dr. DUERRFELD examination of 19 April 1948, G.Tr. p. 12015/17, E.Tr. p. 11787/88).

The Defense thus established that in complete reports having the form of a diary and covering 150 weeks - thus three years - of the construction period, acts of ill-treatment were mentioned only in five reports.

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The statements, each one of them having attached an angry critical remark by the construction manager, exclusively referred to assaults in 1941 and 1942. In view of this historical development, proved by contemporary documents the appearance of greatly deplorable, however individual, assaults on the building site can never substantiate a system of ill-treatment on the part of the I.G. Farben plant. In all cases reported the persons involved did not even belong to I.G. Farben personnel, and by no means were these excesses tolerated.

It is perhaps not particularly surprising that former prisoners, who as Prosecution witnesses testified before the Tribunal, mixed up their hopes or their experiences in the various camps of their sufferings with I.G. Farben plant employees and the working and living conditions in the plant. The Defense wishes however, to point out that not one of the Prosecution witnesses could give the name of even one single I.G. Farben man. Only in one case a name was given which could, however, not be identified so that the Defense could not give its opinion on it. On the other hand, the same examined witnesses can very well remember the names of their physicians or the number of their barracks.

Nevertheless, a number of prosecution witnesses assure they saw how I.G. Farben personnel beat prisoners. The witness WOLLHEIM asserts that he recognized the person involved to have been I.G. Farben employee since he did not wear a uniform and the incident happened close to an I.G. Farben building.

(WOLLHEIM examination of 13 November 1947, G.Tr. p. 3739, E.Tr. . . 3715).

The witness TREISTER is of the opinion that it must have been an I.G. Farben foreman whom he saw beating a

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Frischer because the trucks which were just being unloaded had shunting labels with the address of the I.G. Farben plant.

(THEISTER examination of 26 February 1943, G.Tr. 7324, E.Tr. 77-7).

The witness A. FRINE, finally, asserts he recognized the I.G. Farben people from among the 20 to 25 000 civilians from all kinds of sub-contractors present on the building site by their having worn swastika badges. The badges involved were the Party badges worn at that time by all German Party members.

The former British prisoners of war who testified as prosecution witnesses held very different opinions with regard to the beatings by civilians on the building site. The descriptions permit of all possibilities with regard to their frequency ranging from the assertion that these assaults had taken place "uninterruptedly" (Goward affid. pros. Exh. 1452, NI-11696, Vol. 75) "frequently" and "sometimes" up to the statement by the witness GREENBLUM that he during the 15 months did not see a single civilian having beaten a prisoner.

(GREENBLUM affid. pros. Exh. 1443, NI-11705, Vol. 74, DR. BUERNFELD examination of 19 April 1943, G.Tr. 12021, E.Tr. 11792/93)

Of the defense witnesses the former prisoner NESTLER testified that he in the course of the two years of his activity in the I.G. Farben plant had not seen civilian beating a prisoner. This he had only observed in the case of Lopez and Simon.

(NESTLER examination of 20 April 1943, G.Tr. 12154, E.Tr. 11963).

The former prisoner HIRSCH holds the same view.

(HIRSCH examination of 21 April 1943, G.Tr. 12240, E.Tr. 12012)

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In addition to these witnesses, who made their statements personally before the Tribunal, we wish in addition to refer to a number of effiants from among the abundance of the evidence material of the Defense who state in the same way either that they never witnessed excesses or they report of the quite few cases of accidental misconduct which were punished by the management of the building site.

(Affid. PAUST, Luc. Exh. 15; Luc. Doc. 959, Book 1, p. 84, section 3,
 " RIESS, " 35; " 735, " 2, p. 67, " 8,
 " THURN, " 41, " 76, " 3, p. 7, " 10,
 " ZISCHKE, " 54; " 850, " 3, p. 85; " 10,
 " REIDIGER, " 423, " 419, " 4, p. 72, " 7,
 " EGERT, " 59; " 763, " 5, p. 42; " 13,
 " FLIT, " 95; " 414, " 5, p. 73, " 7,
 " PABST, " 96; " 645, " 5, p. 80; " 13,
 " FABER, " 108, " 181, " 6, p. 38, " 7,
 " FURLS, " 120, " 442, " 7, p. 17, " 20,
 " KLOTZ, " 128, " 683, " 7, p. 36, " 6,
 " KLEINSTER, " 130, " 669, " 7, p. 45; " 6, 8,
 " RAEFLE, " 164, " 747, " 8, p. 14; " 10,
 " RALPH, " 185, " 721, " 8, p. 21; " 6,
 " WITCKE, " 193, " 832, " 8, p. 48, " 5, 8,
 " GASSCH, " 195, " 849, " 8, p. 60/61, " 11,
 " ALBERT, " 201, " 941, " 8, p. 77, " 5,
 " DEHNERT, " 211, " 1044, " 9, p. 17, " 11,
 " MOLL, " 225, " 1076, " 9, p. 70, " 5,
 " JUTZI, " 235, " 984, " 9, p. 113, " 5,
 " RAECKEN, " 241, " 1167, " 10, p. 21; " 10,
 " MAUR, " 256, " 954, " 10, p. 32, " 4,
 " GLEITSMAN, " 251, " 330, " 10, p. 61, " 4,
 " BRINE, " 260, " 1031, " 10, p. 93, " 10,
 " KRAUSE, " 280, " 824, " 11, p. 10; " 10,
 " KILLET, " 283, " 119, " 12, p. 10; " 5,
 " ADLHI, " 294, " 935, " 12, p. 51; " 4,
 " JONASH, " 304, " 981, " 12, p. 86; " 4,
 " RAEWITZ, " 312, " 1161, " 13, p. 2; " 4,
 " RAECKER, " 314, " 1128, " 13, p. 10; " 4,
 " SALVEISBERG, " 315, " 1007, " 13, p. 13; " 4,
 " VIEL, " 316, " 1151, " 13, p. 15; " 4,
 " MEISTER, " 315, " 1168, " 13, p. 23; " 4,
 " HESS, " 320, " 1160, " 13, p. 28; " 4,
 " SCHMIDT, " 321, " 1170, " 13, p. 30; " 4,
 " DERZEACH, " 324, " 1179, " 13, p. 42; " 4,
 " NICKEL, " 330, " 1193, " 13, p. 61; " 4,
 " THUMANN, " 335, " 1247, " 13, p. 80; " 4,
 " STAMING, " 336, " 1248, " 13, p. 82; " 4,
 " BRANETL, " 146, " 1101, " 14, p. 80; " 12,
 " DENTINGER, " 412, " 1444, " 15, p. 102; " 12,
 " SEIBERT, " 413, " 1416, " 15, p. 105).

This development without doubt took place in this way due to the strict order proclaimed by the plant management right from the beginning prohibiting any kind of beatings and to the frequent interventions with the concentration camp administration.

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Here especially the defendant Dr. DUERNFELD did not miss any suitable opportunity to call attention to this regulation to intervene rigorously if necessary, and to advocate time and again a humane treatment of all persons working on the building site. That this attitude held by the plant management must have been known to every individual on the building site, that it was proclaimed not only during conferences but also at the public plant personnel meetings (Betriebsversammlungen), is shown by a very large number of testimonies of which some will be mentioned below. In this connection it is especially pointed out that there are prisoners among them as well. Thus, for instance, the former prisoner HIRSCH says that I.G. Farben's restrictive order to beat prisoners had been the topic of the day among the prisoners.

(HIRSCH examination of 21 April 1948, G.Tr. p. 12240, E.Tr. p. 12012)

The prisoner NESTLER likewise testifies that it was known among the prisoners that the civilians were not permitted to beat them.

(NESTLER examination of 20 April 1948, G.Tr. p. 12194, E.Tr. p. 11983)

In addition, among the witnesses and affiants below are persons belonging to all classes, from among the circles of I.G. Farben, the construction firms and the authorities.

(Exam. SCHEIDER of 20 Febr. 1948, transo. G.p. 7505, E.p. 7446;
 " HERRS " 27 " " " G.p. 7945, E.p. 7868;
 " BRYNKE " 28 April " " G.p. 12156, E.p. 11947;
 " STRALL " 20 " " " G.p. 12125, E.p. 11524;
 " H. SCHEIDER " 14 " " " G.p. 11674, E.p. 11431/2;
 " D. BIRING " 7 May " " G.p. 1424, E.p. 13952;
 Affid. SCHEIDER, Doc. Exh. 2; Doc. Dec. 651, Book 1, 6, 14, sec. 3, 7;
 " EL SCHER, " 60, " 163, " 3, p. 109, " 2;
 " DAVE, " 61, " 1027, " 3, p. 113, " 6;
 " BISPOLD, " 69, " 687, " 4, p. 2, " 4;
 " BRUS, " 70, " 429, " 4, p. 6, " 4;
 " SITZBECK, " 73, " 149, " 4, p. 36;
 " OLITSCHKE, " 76, " 259, " 4, p. 50;
 " STEINER, " 78, " 311, " 4, p. 66;
 " MUELLER, " 81, " 630, " 4, p. 91, " 11;
 " MASCHKE, " 82, " 640, " 4, p. 94, " 4, 5;
 " FISCHER, " 85, " 711, " 5, p. 17, " 15;
 " FORTER, " 91, " 779, " 5, p. 49, " 11;
 " DIGN, " 92, " 783, " 5, p. 59, " 11,

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Affid. BRICK, Due. Exh;	94,	Due. Dec. 87, Back	5, p. 60; sec. 3,	
" KLIPFEL, "	101;	" 61, "	5, p. 100,	6,
" JASTRZEMSKI, 424;	" 105,	" 5, p. 105,	106,	
" DIETRICH, 102;	" 405,	" 5, p. 110,	8,	
" KUPFMAN, 115;	" 316,	" 6, p. 83,		
" BUHLN, 120;	" 442,	" 7, p. 15,	18,	
" DRESSEL, 127;	" 469,	" 7, p. 32,		
" KLOTZ, 128;	" 633,	" 7, p. 37,	6,	
" SZELANSKI, 129;	" 653,	" 7, p. 41,	11,	
" SCHUSTER, 132;	" 695,	" 7, p. 53,	5,	
" KILFIE, 174;	" 301,	" 7, p. 91,	6,	
" WELFER, 176;	" 344,	" 7, p. 100,	3, II	
" HUESCH, 178;	" 494,	" 7, p. 114,	6,	
" FREY, 179;	" 498,	" 7, p. 124,	14,	
" SIEGLE, 183;	" 729,	" 8, p. 9,	6,	
" H. F. ANN, 186;	" 817,	" 8, p. 25,	11,	
" HNOID, 223;	" 944,	" 9, p. 65,		
" WOLTER, 226;	" 1127,	" 9, p. 75,	8,	
" KROMAYER, 232;	" 1204,	" 9, p. 102,		
" SCHWEIZER, 242;	" 125,	" 10, p. 28,		
" TRATTER, 243;	" 1017,	" 10, p. 31,		
" LUECKEL, 245;	" 837,	" 10, p. 39,	5,	
" ROTH, 249;	" 1183,	" 10, p. 52,		
" MEYER Otto, 253;	" 880,	" 10, p. 73,	10,	
" MEYER / ad. 254;	" 127,	" 10, p. 77,	7,	
" MAGNER, 264;	" 167,	" 11, p. 4, 8,	5,	
" GIBBEL, 267;	" 110,	" 11, p. 24,		
" H. G. SCHMIDT, 268;	" 218,	" 11, p. 32,		
" MUELLER, 269;	" 341,	" 11, p. 37/38,		
" CZ. SCH, 270;	" 356,	" 11, p. 43,		
" BOROWSKI, 272;	" 393,	" 11, p. 56,		
" DR. JOSEF ETTER, 275;	" 431,	" 11, p. 67,	3,	
" SOFFELANN, 279;	" 819,	" 11, p. 83, 86,	6, 11,	
" KILLET, 283;	" 119,	" 12, p. 10,		
" H. ELTEGLANN, 308;	" 1072,	" 12, p. 14,	4,	
" G. PH. AD., 285;	" 349,	" 12, p. 16,	6,	
" BLUM, 287;	" 398,	" 12, p. 24,		
" GRUHN, 288;	" 631,	" 12, p. 29,	7,	
" AD. LPHI, 299;	" 935,	" 12, p. 51,		
" LTHOF, 295;	" 940,	" 12, p. 52,		
" BRENTZEL, 296;	" 950,	" 12, p. 54,		
" BURG, 297;	" 951,	" 12, p. 60,		
" SCH. UTT, 301;	" 1012,	" 12, p. 75,		
" SARNEWITZ, 312;	" 1161,	" 13, p. 2,		
" SCHMITT, 317;	" 1014,	" 13, p. 18,		
" RENNER, 322;	" 1174,	" 13, p. 35,	5,	
" LIECH, 323;	" 1175,	" 13, p. 39,	4,	
" KARL, 328;	" 1195,	" 13, p. 53,		
" STERR, 333;	" 1213,	" 13, p. 76,	3,	
" LUELER, 148;	" 389,	" 14, p. 96,		
" KR. SCHERSKI, 394;	" 1422,	" 15, p. 3,		
" PAULI, 403;	" 1433,	" 19, p. 52,	4,	
" F. ETZOLL, 407;	" 1417,	" 15, p. 73,	2,	
" DUEHER, 414;	" 1414,	" 15, p. 112,		
" KUEBLER, 416;	" 1421,	" 19, p. 120,	5,	

In the assertions by the Prosecution the fatalities allegedly caused by the measures adopted by the plant, play a special part. The plant is charged with thousands of fatalities among the prisoners.

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a large number of which is alleged to have taken place on the very factory grounds.

In this connection we wish once more to refer to the testimony by the witness FRINE who had stated that 3000 people had died in connection with the chimney construction the absurdity of which was shown in the previous paragraph. The witness VITEK, as well, describes that there had been weeks where hundreds of prisoners had died in the plant. During his examination the witness is asked how many killings he saw on the I.G. Farben grounds in a week. He answers verbatim: "50, if you like, 100, if you like, 200, if you like!"

(Dr. VITEK examination of 18 November 1947, Germ. Tr. p. 3989, Engl. Tr. p. 3962).

The witness HESS states that up to 100 prisoners had died of exhaustion in one day.

Although of the 19 British prisoners of war 14 prisoners do not make any statement at all with regard to the question of fatalities in the plant, yet there are British witnesses who testify that they have seen "five daily", another "daily", once even "30 at a time, still another" hundreds of murdered persons altogether".

(Affid. FERRIS, Pres. Exh. 1463, NI-11693, Book 75;
" CO. RD, " 1462, NI-11696, " 75,
" DAVISON, " 1464, NI-11694, " 75.)

At the end of the case-in-chief the Prosecution has, however, at the same time submitted as rebuttal document the death roll from the SS camps already quoted. (Pres. Exh. 2262, NI-15295). In this death roll all deaths are listed from the establishment of the camp till its evacuation, thus covering 27 months. If it is taken into consideration that January of 1944 was booked twice, it contains a total of 76 deaths, which

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occurred during work. In addition, 27 persons are listed as having been shot during work, which was stopped entirely since April 1943, thus at the time when on the initiative of the plant management the SS guards were removed from the plant and posted at the plant fence. Here the loss of 26 men by an air-raid on 20 August 1944 and additional 6 men lost due to air-raids in December 1944 and in January 1945 are not included.

If the chronological distribution of the fatalities during work is considered then a decline can clearly be discussed from the climax in January 1943. This becomes all the more evident if it is taken into consideration that on the other hand from that time on the number of prisoners allocated to labor greatly increased. According to the death-roll during the entire year 1944 of 6000 prisoners ~~allocated to labor~~ allocated to labor, 30 men died as a result of air-raids and 16 for other reasons *on labor details*.

Unfortunately the death roll does not show the cause of death in each case. There may thus have been accidents. The death may, however, also have been a natural one, since, as it was found out, prisoners frequently did not report sick, because they feared losing their job in the plant and being retransferred to the main camp. It is also quite possible that these deaths also include persons who were shot, having for instance been shot by SS guards when attempting to flee while with details outside of the plant grounds or on the march, and who for some reason or other were designated as having "died on labor details". By no means can it be concluded from this number of 76 deaths covering a period of 2½ years,

that the plant management of the I.G. Farben plant was in any way responsible for the cause of death. On the contrary, however, a comparison of these figures with the claims of the prosecution shows quite clearly that the latter are incorrect. Prosecution witness Doyle was the only witness of 37 dependents for the prosecution to see 3 dead prisoners hanging over the entrance gate of camp IV. In actual fact, there was no projecting part or area of any sort.

(Exam. Doyle of 17 Nov. 47, Trans. G.P. 395, S.A. 3926.)

Now ~~inaccurately~~ the frequency of deaths of prisoners in the plant was assessed by visitors to the plant, employees of sub-contractors and of the I.G. Farben, may be clearly seen from the following examinations of the witnesses who appeared before the court and/or from statements of the defense dependents. Hardly one witness ever saw a dead man, which is wholly natural considering the rarity of deaths and the enormous extent of the work groups.

(Exam. Goffner of 21 Apr. 48, Trans. G.P. 1, S.A. 1033,
 " Boymanis of 26 Apr. 48, " 12151, S.A. 11944,
 " Glessen of 24 Feb. 48, " 7015, S.A. 7551
 " Murr of 7 May 48, " 13913, S.A. 13913,
 Affid. Raschel, Doc. 54, Doc. Doc. 850, Vol. 3, S.A. 84, No. 6
 " Rosch, " 87, " 722, " 5, S.A. 36, No. 10
 " Dietrich, " 102, " 405, " 5, S.A. 112, No. 15
 " Buhlan, " 120, " 442, " 7, 170, No. 20, II.
 " Boennert, " 211, " 1044, " 2, 1, 14, No. 7
 " Bennik, " 212, " 1040, " 9, 30,
 " Lueder, " 213, " 993, " 9, 34, " 3
 " Bocha, " 216, " 634, " 9, 38, " 7,
 " Schmidt, " 221, " 917, " 9, 55, " 7,
 " Mell, " 225, " 1070, " 9, 71, " 8,
 " Wolter, " 226, " 1127, " 9, 75, " 14,
 " Unterstenhoffer, 228, " 1038, " 9, 89,
 " Wagner, " 234, " 1019, " 9, 109,
 " Hartkorn, " 241, " 1167, " 10, 21,
 " Schweizer, " 242, " 125, " 10, 27,
 " Heide, " 260, " 1031, " 10, 44,
 " Traub, " 261, " 1123, " 10, 99,
 " Diesel, " 277, " 657, " 11, 36,
 " Fratz, " 299, " 1005, " 12, 69,
 " Becht, " 300, " 970, " 12, 73, " 3,
 " Weber, " 303, " 1021, " 12, 32

affid. noelterman,	Doc. Exh. 308,	Doc. Doc. 10,	Vol. 1,	F. 97, No. 6,
" Gutbrecht,	" " 333,	" " 1201,	" 13,	F. 73, No. 7,
" Wittig,	" " 139,	" " 1206,	" 14,	F. 42,
" Brandl,	" " 146,	" " 1101,	" 14,	F. 83, No. 11,
" Pauli,	" " 406,	" " 1453,	" 19,	F. 52, No. 3,
" Heidegger,	" " 402,	" " 1336,	" 19,	F. 58, No. 6,
" Braher,	" " 414,	" " 1414,	" 19,	F. 111.)

Reference had already been made to the significance of the plant fence in the discussion of Rebuttal Document 2362 (AI 15295) (cf. p. 115). From the figures of this document alone it may be seen what a tremendous state in the improvement of working conditions was constituted by the plant fence and the exclusion of the SS guards from the plant grounds. The prosecution has attempted to construe the facts as if the plant fence were built on the initiative of the SS. However, it may be seen from the weekly report of 4 September 1941 that I.G. Farben expected a better distribution and allocation of the prisoners in any case from the erecting of the factory fence. Even if at that time the simply enormous importance of the fence for the improvement of living conditions as a whole of the prisoners had not yet been recognized, ~~this was~~ nevertheless and beyond doubt that the plant took the initiative in erecting the fence, and this with the intention of improving the working conditions of the prisoners. (Pros. Exh. 117, Doc. AI. 14540.)

Rebuttal Document, Weekly Report 55 dated 8 June 1942 merely shows that in order to accommodate on grounds the SS did not tolerate any outside work details in the water-works, in the plant railroad station, barracks camp settlement, etc., but only inside the plant enclosure already partly erected by the plant. (Pros. Exh. 2139, AI 14523)

The weekly report 102/103 of 8 May 43 shows, as defined by the

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Affid. Arnold, Exh. 223, Exh. 944, Vol. 9, p. 65,
 " Verdicke, " " 227, " " 1140, " 9, p. 61,
 " Wemeyer, " " 230, " " 1004, " 9, p. 101,
 " Jutzi, " " 235, " " 984, " 9, p. 114,
 " Lueckel, " " 245, " " 837, " 10, p. 38, No. 3,
 " Wagner, " " 264, " " 167, " 11, p. 3,
 " Wackenschmidt, " " 268, " " 218, " 11, p. 34,
 " Schroeter, " " 274, " " 401, " 11, p. 33,
 " Gebhardt, " " 285, " " 349, " 11, p. 16, No. 3,
 " Brantzel, " " 296, " " 950, " 11, p. 54,
 " Burg, " " 297, " " 951, " 12, p. 59,
 " Schaudt, " " 301, " " 1012, " 13, p. 75,
 " Lindemann, " " 303, " " 1084, " 13, p. 89,
 " Noepke, " " 406, " " 2436, " 19, p. 68, No. 4.)

In this connection and in conclusion of this chapter on the treatment of the prisoners, the defense considers the finding important that not only the construction and assembly management but also the supervisory authorities and the employees of I.G. Farben saw that the situation of the prisoners met with progressive improvement of the living and working conditions in the course of time, through the efforts of I.G. Farben.

(Exam. Dr. Muerrfeld of 19 April 48, Trans. G.P. 11939, 12049.
 " " of 15 April 48, " " 11727, 11819
 " " of 15 April 48, " " 11762,
 " " 11530,

Affid. Schalottig, Exh. 49, Exh. 174, Vol. 3, p. 44, No. 6
 " Appel, " " 93, " " 420, " 5, p. 36/37,
 " Noefer, " " 205, " " 974, " 8, p. 92/93,
 " Killet, " " 237, " " 987, " 9, p. 121,
 " Noelfer, " " 259, " " 1024, " 10, p. 91, No. 5,
 " Hartkora, " " 241, " " 1167, " 10, p. 17,
 " Dentinger, " " 412, " " 1444, " 19, p. 103, No. 13.)

The defendant himself describes this progressive improvement of the prisoners' lot as initiated by the plant in a particularly lucid summary as an interpretation of the report of the 24th construction conference of 22 June.

(Proc. Exh. 1505, HI 11142, Vol. 77, G.P. 93, p. 113,

Examination Dr. Muerrfeld of 19 Apr 48, Trans. G.P. 12005,
 " " 11774/75.)

and this result is impressively confirmed by the experienced Chief Engineer Fashke, when he says that no one could have put anything over on him—he had been in the business 40 years—or showed him any Potemkin villages. If he had seen anything at all that

which had not been in order from a social welfare point of view, "that all hell would have broken loose!"

(Exam. witness of 24-Mar. 1948, Trans.G.P.10117/8, L.F.9982/83.)

A. subordination of the prisoners to the SS for disciplinary measures on the construction site.

The prosecution claimed (Indictment, sub-section 140) that "I.G. Farben's murderous production requirements" led to a system of reporting to the SS by I.G. Farben, which authorized in addition to resorting to corporal punishment, that the prisoners be sent to the gas chambers and crematoria of Birkenau.

In contradiction to this, the defense must state that not the slightest proof for this claim has been presented. In another place (above section IV B, C and D) we have already discussed in detail the fact that the production requirements by order of the plant management had to be suited to physical and professional ability. Here, attention should merely be called once more to the fact that it has been proved by an ever increasing number of statements by defense witnesses and co-defendants, that there could be absolutely no question of a slave-driving system or of unjustified production requirements.

No proof could be furnished for the existence of slave-driving systems of reporting, or even of merely a single case of malicious reporting by I.G. Farben to the SS.

Actually, by order of the SS, daily work sheets had to be made out for each details, which had to contain the numbers of the ~~prisoner~~ ^{skilled} workers and their helpers who were actually employed in the firms in question or with an I.G. enterprise. These work sheets helped on the one hand in settling the

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reimbursements between the SS and I.G. Farben, and on the
other hand, between sub-contractors and I.G. Farben, and
besides they were generally useful for statistical purposes.
For a while the total production of any one entire detail
had to be given on these sheets in a single number in per
cents, relative to the production of free workers in
accordance with the recognized rules of technology.
(cf. section IV C).

(affidavit Fischer, Exh. 85, Doc. Dec. VII, Vol. 5, I. 16/17,
Examination Schneider of 14 Apr. 48, Trans. G.P. 11401, E.P. 11401).

^{really} If a production estimate of this sort, which was normally
rendered at between 80 and 100%, was purported to have been
low by an incompetent or malicious foreman of a sub-con-
tractor or of the I.G. Farben, in proof of which, however,
no document has been presented in evidence, this could
only have led at the most to the calling to account of
the Kapo of the detail in question by the SS, but never
to the punishment of a single prisoner. But even for this
theoretical possibility, the case in chief yielded no
facts which could lead to a conviction, the less so since
it was proved that as far as Camp IV was concerned, all
this statistical work was handled solely by the autonomous
administration of the prisoners in Camp IV of the SS.
In actual fact, the prosecution does not support its occu-
sation on these statistical work sheets, but on punishment
reports of the SS, which it introduced as Exh. 1451, 1477,
1478, 1479, 1481, 1482, 1483. These do not affect the
defendant, as the latter has already shown on the witness
stand. (Exh. Dr. Duerrfeld of 19 Apr. 48, Trans. G.P. 12036/38,
E.P. 11807/09).

The punishment reports are taken from an apparently closed
and complete series of all SS punishment reports, from the
period between September 1943 and October 1944,

with an average number of over 6500 men in Camp IV. The prosecution submitted these reports (AI 11001 - 11045) to the defense for inspection a few days before the ending of the case in chief. From these 45 punishment reports it appears clearly that the initiative was taken for the reports in:

- only 2 cases by the plant police,
- in 2 cases by sub-contractors on the job,
- in 37 cases by the Co,

which enforced disciplinary supervision of the prisoners employed on the job, on its patrols in the plant. The 2 cases reported by the plant police concerned illegal currency transactions and an irresponsible theft of oil. In no case was the initiative taken by the defendant Dr. Duerrfeld. If one examines all 45 of the cases of punishment of the report period of these 14 months, the reasons for punishment are as follows:

- 7 cases of theft and theft from cash des,
- 6 cases of smoking against regulations in places which for reasons of plant safety, smoking was banned as a rule for all workers and employees in the vicinity of plant installations which might be subject to explosion,
- 4 cases of illegal currency transactions,
- 19 cases of absence from the place of work against regulations, including staying in Camp IV in spite of Co orders for the work details to march,
- 5 miscellaneous cases (suspicion of flight, spreading rumors, fraternization with prisoners of war and eastern female workers, etc.)

The misdeeds listed were punished in

20 cases with work on sandy and punishment drill

20 cases with beating,

1 case with confinement in dungeons (Stambucker).

For be it from the defense to excuse or to defend in any way the SS's brutal system of punishment, but it would like to lead the claims of the prosecution back to the proved facts. It lays particular value, moreover, on the finding that in no case is

the court confronted with a prisoner's alibi report for the purpose of punishing him; that I.G. Farben did not have the slightest thing to do with the actual punishment of the prisoner, that on the contrary the SS was responsible for investigating and meting out punishment and that Dr. Merrifield in particular neither ordered any punishment nor did he know anything at all about the actual corporal punishment of a prisoner and of the existence of a dungeon or an arrest cell in Camp IV.

(Exam. Dr. Merrifield of 19 April 48, Trans. G.P. 13038/39
S.P. 11809/10)

Affidavit "pennig, Vol. XX. 155, Dec. 1957, Vol. 15, P. 24.)

The defendant Dr. Merrifield only knew about the demand of the SS that violations of discipline of any sort were to be reported for investigation via the SS-labor allocation office within the plant.

This demand of the SS could be utilized by the plant management in the interests of the prisoners in addition to the even stricter order to the I.G. Farben departments and firms to avoid conflicts and clashes between civilians and prisoners, which succeeded to the fullest extent. It has been proved that the authority to discipline the prisoners was clearly in the hands of the SS, even on the construction site. In the plant, there was the SS labor allocation office. From it, the Agpos received their orders. The civilians of the sub-contractors of I.G. Farben had to go to the SS office or to the Agpos for the distribution of assignments. Communication between civilians and prisoners was forbidden. Where the responsibility lay is clearly characterized in the Affidavit.

of Faust with the appended chart regarding the responsibility, which was explicitly confirmed in the cross-examination. (Affidavit Faust, Doc. Exh. 41, Doc. Doc. 475, Vol. 1, P. 105, Exam. Faust of 8 May 48, Trans. G.P. 1-172, S.P. 159 'a.)

This fact is confirmed by plant employees, prisoners and by documents pertaining to that period, in particular by Detached Document Exh. 200.

(Examination Treister of 26 Feb. 48, Trans. G.P. 1-70 '2, S.P. 7710,
" of 31 April 48, " 1-360, " 1201-13
" of 20 April 48, " 1-101/43,
" 1-11960/82,
" Dr. Duerrfeld of 18 Apr. 48, Trans. G.P. 1-11936,
" 1-11748,
" Dr. Feige of 10 April 48, Trans. G.P. 1-1103,
" 1-11905,

Examination
Document Exh. 375, Doc. Doc. 1544, Vol. 10, P. 10
" 374, " 3318, " 16, P. 39,
Trans. Exam. 1031, Doc. 40, Doc. 7,
Affid. v. Low, Doc. Exh. 71, Doc. Doc. 47, Vol. 4, P. 1, Doc. 8,
" Coffman, 130, " 817, " 8, P. 30, " 6,
" Bardovitz, 108, " 946, " 8, P. 3, " 5,
" Mann, 203, " 967, " 8, P. 37, " 1,
" Schick, 110, " 1040, " 9, P. 20, " 1,
" Bernicke, 447, " 1140, " 9, P. 23, " 1,
" Fritz, 299, " 1005, " 10, P. 37, " 1,
" Becker, 51, " 1128, " 13, P. 8, " 1,
" Schmidt, 84, " 1170, " 13, P. 31, " 1,
" Outbricht, 333, " 1201, " 13, P. 7, " 1,
" Starr, 334, " 1213, " 13, P. 70, " 2,
" Stark-Mann, 339, " 1041, " 13, P. 6, " 1,
" Koshlor, 340, " 1264, " 13, P. 57, " 1,
" Heidebrecht, 140, " 1169, " 14, P. 45, " 3c,
" Brandl, 143, " 1161, " 14, P. 30, " 17,
" Hasfeld, 149, " 421, " 14, P. 99, " 1,
" Mittermeier, 415, " 1415, " 14, P. 117, " 1,
Construction Report 382, " 1402, " 17, P. 30.)

Prosecution Document Exh. 1449 (NI 10168, Vol. 74, S.P. 37)
regarding barracks with arrest cells for civilian workers
has been fully explained by the defendant and the witness
stand. (Exam. of Dr. Duerrfeld of 18 Apr. 48, Trans.
G.P. 12035, S.P. 11846.)

D. The air-raid protection system of the 1-10.

The prosecution accuses I.G. Farben of providing insufficient
air-raid protection for the prisoners.

However, the defense is in a position to show that

the efforts of the plant in the field of air-raid protection were enormous, like in other place in Upper Silesia. After the cemented splinter-proof trenches and mine-shift equipment, which was regarded at first as sufficient, the plant management had direct-hit-proof surface shelters built with over 3 m thick ceilings for the entire personnel. In this way, there were air-raid shelter accommodations for about 65,000 persons, although only 30-35,000 persons were employed. Would the plant management under these circumstances have reserved the accommodations only for Germans, of whom there were only about 7,000 in the plant?

(Affid. Faust and Sitzenastuhl, Doc. Exh. 43, Doc. 481, Vol. 3, P. 16
 Exh. Feiga of 20 Apr. 48, Trans. G.F. 12096, 1 197/1 111,
 S.F. 11895/27, 11910,
 Exh. boymanns of 20 Apr. 48, Trans. G.F. 12140, S.F. 11935,
 Officer of 21 Apr. 48, Trans. G.F. 12245, 1 197,
 S.F. 12635/20.)

Now, from the fact that in the time when there was only one single direct-hit-proof surface shelter ready, which was intended at first naturally only for the 5 sector of the employees essential to the running of the plant who had to stay on their jobs until shortly before the raid began, the prosecution concludes that the prisoners were treated worse than other workers.

The fact was, however, that in this brief period of time, the entire remaining personnel, including Germans, foreigners, prisoners of war and prisoners, if they could not be accommodated in the older plant air-raid shelters, had to clear the plant. (Exh. Dr. Duerrfeld, 16 Apr. 48, Trans. G.F. 11906, S.F. 11655.) Regarding the billet camps, in them there were no surface shelters for the Germans and foreigners, just as in Camp IV.

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for ~~night air raids~~ night air raid did not need to be taken into consideration. If there actually was a night air raid, the order had been given for the inmates of the camps situated close to the plant, thus also for prisoner Camp IV, to go to the surface shelter in the plant or to be kept there. The inmates of the more distant camps were supposed to evacuate the camps and to go even further away from the vicinity of the plant. Regarding the precautionary air-raid measures taken by the plant, on the basis of which there was only a relatively small number of deaths, the defendant has introduced evidence to which the following will refer. It proves that the air-raid measures applied in the same manner to the foreigners, prisoners of war and prisoners as to the Germans.

Affid.	Aibel,	440, 241, 250, 231, Vol. 10, .55,
"	Diesel,	277, 607, 11, 77,
"	Dietze,	262, 103, 11, 12, 13,
"	Gzsch,	210, 310, 11, 43,
"	Enecker,	314, 1128, 13, 11,
"	Hurl,	348, 1193, 1, 54,
"	Juchen,	329, 1193, 13, 67,
"	Kochler,	340, 1254, 13, 98.)

V. The alleged connection of I.G. Farben with events in the concentration camp.

*. The connection of the plant management with the administration of the work camp and concentration camp.

In its case-in-chief, the prosecution made the claim that the I.G.-Farbenindustrie was connected in some way with the events in the concentration camp Auschwitz. It tried to support this claim in various ways. One of the supporting claims is that the plant management of the I.G. Farben plant was in closest personal connection with the leaders who were responsible for the terrible events in concentration camp Auschwitz. The prosecution, however, could not produce any evidence other than the excerpts from weekly reports of the construction management introduced in rebuttal. Document RI 15455, -22, -2009, 129, for the most part, these excerpts of the weekly reports refer to events which took place before the period when the defendant Dr. Guerrfield took over the management of the construction site. With regard to the contents, however, let me point out that of course certain joint discussions had to be carried on in view of the official and geographical unity, to which these reports refer. In what other manner were the questions of labor allocation of the prisoners and their treatment on the construction site to have been solved? It should also not be considered unnatural that representatives of such an important plant had

representatives of the prison located at the same spot, for the personnel of the concentration camp were considered as such, should be found together at any unavoidable gatherings. Regarding the private opinions about the management of the plant and the officers of the concentration camp had of each other, the defendant Mr. Muerrfeld testified in detail on the witness stand. It was the first time he ever spoke to his co-defender. How great his ignorance of the SS organization was may be seen from his incorrect report concerning the office designation of the SS in Prosecution Ex. 1422, (AI 11115, Book 72, A.P. 96). Three times in the years from 1941 to 1943, he was present on official tours in the concentration camp and received no ~~impressions~~ ^{impressions} from them. That deceptive facilities were shown on these tours, has unfortunately been shown by the post-war period and the examination of the witness bench of May 48 (Trans. G.P. 14688, A.P. 14330) Furthermore, the defendant was in Camp IV five times without having discovered anything irregular. Moreover, the relationship between the responsible persons of the plant and the few officers of the SS with whom there had to be an official connection, was polite but cool, insofar as occasionally sharp clashes regarding questions of the allocation of prisoners did not take place.

(Exam. Mr. Muerrfeld of 19 April 48, Trans. G.P. 11975-7
12007, 12010, 12015
Trans. S.I. 11701, 83,
11777, 11780, 11786

" Helm. Schneider 14 April 48, Trans. S.I. 11400
" Faust, of 8 April 48 " G.P. 11376
S.I. 13973).

Few are able to judge the personal attitude of the defendant

Dr. Duerrfeld toward the gentlemen of the bar as well as the defendant's driver, secretary and household employees.

(Affidavit Wozniowski, W.S. 252, W.S. Dec. 361, Book 10, P. 68
 " Faber, " 108, " 181, " 5, P. 30, 11
 " Moritz, " 345, " 176, " 14, P. 13).

B. The appearance and the work capacity of the prisoners.

The prosecution, in order to construe a crime in connection between I.G. Farben and the concentration camp Auschwitz, has further claimed that I.G. Farben used prisoners for work who were not capable of working and of whom it could have been seen merely by looking at them that they already had one foot in the grave. The prosecution bases its claim for the most part on the judgment of former English prisoners of war. These persons report the bad physical condition and the sorry appearance of the prisoners as being stereotyped expressions. The defendant Dr. Duerrfeld discussed these statements of the Englishmen in detail on the witness stand and attempted to explain the grotesque contradiction to the evidence furnished by the defense. The judgment of the Englishmen may be understood only if one takes into consideration the fact that the latter, ^{themselves} ~~and~~ at the time of their allocation in the plant, were in a better condition by far than the average of all the construction personnel because they were receiving numerous gift packages from England. This fact was also admitted by an English witness.

(Examination Dr. Merrifield of 19 Apr 46, Ex. 18, G.P. 11788/3,
18018/18
2.F. 11788/70
11788/92
Merrifield of 18 Nov 47, Trade G.P. 3907, 2.F. 3939).

Regarding the condition of the prisoners as seen through the eyes of the construction management, Construction manager Faust has stated the following:

"The outer appearance of the prisoners differed greatly. Big and small, fat and thin, men who looked well and men who looked poorly. This is a matter of course and natural aside from the jail psychosis from which the one suffers more, the other one less. If a thousand men are assembled arbitrarily, shorn and put into striped suits, they will no doubt show the same appearance which the prisoners working for IG Farbenindustrie Aktiengesellschaft had shown. Even today I am sure that a practical example of its only 100 civilians picked at random would show the correctness of my belief.

On the basis of these ideas, I had no hesitation in employing the prisoners for construction work of all kinds, particularly since it is a well-known fact that work is a blessing for a person robbed of his freedom, and that enforced inactivity considerably increases the depressive consequences of the jail psychosis."

(Affidavit Faust, Ex. 339, Doc. Dec. 1115, Sub. 9, P. 127).

The ~~factory director~~ ^{Plant inspector} jurisdiction in this case also states that he very rarely observed that prisoners looked especially bad on the I.G. plant grounds.

In general, however, the state of health was good.
(Examination Vols of 15 Apr 48, Trans.G.P.11739, E.P.11557).
The very critical Mr. Giessen, a frequent and regular
visitor at Auschwitz, states that at the beginning of
1942, a majority of the prisoners looked very bad. Later,
however, it was quite different. It could be quite dis-
tinctly perceived that the bearing, the appearance, the
work of the prisoners in this period was very considerably
improved. (Exam. Giessen of 24 Feb. 48, Trans.G.P.7601, E.P.
5737).

The witness Feige states in agreement with this that, in
October 1942 when the prisoners were coming from every
possible camp, these looked worse than later, but by
no means so bad that they could not have performed any
work. In the course of months and years, the appearance
visibly improved till it created a thoroughly good, healthy
impression.

(Exam. of 20 Apr. 48, Trans.G.P.12098, E.P.11899).

Construction expert Heymann is also certain that from a
purely physical standpoint, the prisoners did not look any
worse than workers today. The mental side, the psycholo-
gical condition, etc., must of course also be taken into
consideration.

(Exam. of 20 Apr 48, Trans.G.P.12134/3, E.P.11946/47.)

All the witnesses questioned before the Court state the
same thing with regard to this.

(Ex. m. 28 of 27 Feb. 48, Trans.G.P.7941, E.P.7865)

" Bruns of 12 Mar. 48 " " 9071, E.P. 8977, 8989

" H. Schneider of 14 Apr 48 Trans. G.P.11416/17

" Gaffner of 21 Apr. 48, Trans. G.P.12457/58,
E.P.1 631

" Biedenkopf of 1 Mar. 48, Trans.G.P.8230,
E.P.8158

Exm. Jenne of 24 March 48, Trans.G.P.10110, S.F.9920
 " Chr.Schneider of 20 Feb.48, Trans.G.P.7323, S.F.7-64
 " Ter-wier of 17 Feb.48, Trans.G.P.7314, 7322
 S.F.7157, 7154
 " Baetfisch of 9 March 48, Trans.G.P.8-13,
 S.F.87-1).

From the affidavits which the defense produced in evidence,
 only a few passages should be pointed out in which the
 appearance of the prisoners is discussed in the same manner,
 to the effect that it did not arouse hesitation of any sort
 in the deponents in regard to the prisoners' ability to
 work.

(Affid. v.Low, Dec.20. 71, Dec.100.47, Book 4, P.11, Sec.5
 Stanger 78, 311, 4, P.37
 Rediger, 23, 19, 4, P.72, 74
 Schenberger, 11, 281, 6, P.73
 Wolf, 116, 322, 6, P.87, Sec.4
 Sehnig, 212, 1040, 9, P.21
 Walter, 226, 1127, 9, P.75, Sec.12
 Koenler, 230, 1056, 9, P.96, Sec.2
 Jutzi, 235, 984, 9, P.115
 Halwert, 282, 1229, 11, P.112, 14,
 19, 21
 Burg, 297, 951, 13, P.59
 Weber, 303, 1021, 13, P.83
 Hoelterman, 308, 1072, 13, P.94, Sec.2
 Buraswicz, 312, 1151, 18, P.1
 Wittig, 139, 1200, 16, P.42
 Goerth, 356, 1424, 19, P.21
 Holmman, 404, 1434, 19, P.57, Sec.2
 Seibert, 413, 1416, 19, P.105).

G. Ignorance of selections.

As a further link in the chain of prosecution claims that I.G. Farben was somehow involved in the events in the concentration camp Auschwitz, the prosecution assumes that the plant management of the I.G. Farben plant Auschwitz knew of selections which are supposed to have taken place in labor camp IV of I.G. Farben for the purpose of extermination of persons. The prosecution has a number of witnesses who were former prisoners report on the occurrence of such selections by affidavits and testimony before the court.

We will not go into the question as to whether such selections, that is, the choosing of prisoners incapable of work and their deportation for the purpose of killing them, actually took place and to what extent, in more detail here, since the alleged selections, as reported by witnesses, took place within the camp and solely by order of and at the responsibility of the SS. Here we shall merely investigate the question of whether the plant management of the IG-Farbenindustrie, and in particular the defendant Dr. Duerrfeld knew or could have known of such events.

How irresponsibly prosecution witnesses make the most serious accusations in this field may best be seen in the testimony of the witness Herzog, who claims that everyone from the smallest child to the General Director knew that when prisoners went away from Camp IV, they were sent into the "Aktion stores".

At the same time, however, he reports that approximately 10,000 prisoners were transferred to other labor camps (thus, not ~~extermination~~ ^{for extermination}). He also admits that he, although he was report clerk of Camp IV for almost 3 years, never spoke with a civilian. (Exam. Herzog of 12 Nov. 47, Trans. G.P. 3652, S.P. 3630).

We will not go into further details of the complete discrepancy which exists in the case of this witness between the figures given in his examination on the one hand, and his affidavit on the other hand (Vol. 79, I 1.33), and which makes his statements seem ~~not exactly credible~~ ^{rather incredible}.

Prosecution witness Rausch admits that they naturally would not have spoken with members of the SS about this, for that would have been suicide. Officially, no one had anything about the matter. So as to admit further that fluctuations in the personnel of Camp IV were known to I.G. Furber, to be sure, but that they could not have known who of those persons leaving Camp IV were transferred to other labor camps, or were sent to Birkenau. And he further admits that an outsider, to whom the circumstances were not familiar, could not have known what happened to the prisoners in Birkenau. The same prosecution witness states that no one from I.G. Furber ever participated in the selections, which took place in the hospital.

(Exam. Rausch, 15 Nov. 47, Trans. G.P. 3786-88, S.P. 3761/62)

The defendant Mr. Merrfeld testified in detail on the witness stand concerning his actual knowledge of the so-called internal and external

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fluctuations in the ~~work~~ ^{composition} of the prisoners' work details.
It was a familiar phenomenon that the SS constantly and
arbitrarily changed the ~~work~~ ^{composition} of the details for the
most varied reasons, and transferred prisoners within the
details. This often led to violent clashes between camp
management and construction management. Besides, the well-
founded suspicion after arrest, that the camp management of
Camp IV very often withdrew the best and most ^{skilled} laboriously ~~trained~~
~~prisoners from~~ I.G. Farben in order to use them in ^{establishing} ~~building~~
new labor camps. The transfer of the witness Thuber to
Trzebinia and that of the witness Herzog to ~~other~~ ^{skilled workers}
are the best examples for transfers of ~~prisoners from~~ ^{skilled workers}
~~work~~ to other labor camps. The camp management always
actively disputed fluctuations of that sort with the
exception of - for a case in which allegedly large groups
of Polish prisoners and Russian prisoners had to be trans-
ferred for security reasons to camps within the Reich, in
view of the critical military and political situation.
Such changes in the personnel of I.G. Farben seem all the
more natural today, since there was an order of the
Economic and Administrative Main Office that prisoners should
change their place of work every six months in order not
to let them come into too close personal contact with the
civilians. The defendant Dr. Guarrfeld knew only the
actual labor allocation figures of the prisoners, which
were reported to his office on specific days every two
weeks. He knew nothing of - contingents, let us mention
a systematic change of prisoners within the camp.

but he could positively not draw any conclusions as to criminal circumstances of any sort.

(Exam. Dr. Duerrfeld of 19 April 48, Trans.G.I. 11963/67, 11749/54.)

According to his own statement, the defendant also knew that the office chief competent for labor allocation in the Economic and Administrative Main Office was ordered, at the beginning of 1943, that prisoners who were transferred from other concentration camps in the Reich to Camp IV, but were not suited for labor allocation, should be retransferred to the main camp Auschwitz. The statements of the defendant absolutely concur with the rebuttal document subsequently submitted by the prosecution, which among other things contains an excerpt from the weekly report 20/91 of 10 Feb. 43.

(NI 15256, Exh. 207, Vol. 63, G.F. 38, 2.2.43.)

(Exam. Dr. Duerrfeld of 19 Apr. 48, Trans.G.I. 11961-63, 11747/49.)

Former prisoner Wirsch stated on the witness stand in this connection that transfer to Birkenau by no means meant extermination. He remembers that is in line with the camp Birkenau he once stated, at the beginning of 1943, a transport of approximately 1500 prisoners from Camp IV. The people were perfectly healthy and were sent to Birkenau to work. Often, sick people came too, and they came to the camp or were sent to the hospital.

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(Examination Hirsch on 21 April 1948, German transcript p.12245, English transcript p.12018).

Now the Prosecution, on the basis of testimonies of former prisoners, has contended that the defendant was present in person one morning at a selection. However, this is not only absolutely inconsistent with the testimony of the defendant himself but also with the ^{result} ~~part~~ of the case in chief pertaining to the selections, which were undoubtedly carried out in the presence of SS physicians in the hospital building. Further, I draw attention to the discrepancy between the testimonies stating that Dr. Duerrfeld was present at this procedure: according to one he was on the ^{roll call} ~~parade~~ ground, according to the other ~~at the gate~~, *in front of the gate outside of*

The defendant himself on the witness stand has described that *[the camp]* he once watched the prisoners as they marched away from the beginning to the end, because he intended to make a suggestion to reduce the time needed for formation and ^{according} ~~taking off~~ for the benefit of the prisoners. The only explanation imaginable is that these witnesses are thinking of this occurrence. But actually, according to the testimony of the defendant, during the entire process of departure not the slightest incident occurred apt to arouse the suspicion of the defendant in any way.

(Examination Dr. Duerrfeld on 19 April 1948, German transcript p.12033; English transcript p.11803).

The defendant Dr. Duerrfeld further refers to the fact that he exactly recalls that this occurrence took place in June 1943, in other words at a time when according to the medical records transfers to Birkenau had not yet at all taken place. From this, the inevitable conclusion must be drawn that between the harmless watching of the marching off of the prisoners

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and the deportation of prisoners to Birkenau no objective connection can be established, quite apart from the fact that the defendant had not the slightest knowledge of the real happenings in Birkenau, as I am going to prove subsequently in another connection.

(Examination Dr. Duerrfeld on 17 April 1948, German transcript p.11941-53, English transcript p.11747-49).

Concerning the question of knowledge and implementation of the selections the Defense may be allowed to cite two more testimonies of former prisoners: The witness Nestler testifies that he did not know the word "selection" until after the liberation. But in Camp IV there seems to have been rumors circulating that it ~~often~~ ^{sometimes} happened that prisoners unfit for work were selected and transferred to Birkenau, but one did not know what happened to them there.

(Examination Nestler on 20 April 1948, German transcript p.12202, English transcript p.11991).

The witness Hirsch testifies that in his time, i.e. from the middle of 1944 when he was staying at Camp IV, no selections took place.

(Examination Hirsch on 21 April 1948, German transcript p.12245, English transcript p.12017).

To what extent the camp administration deliberately tried to keep these things secret appears also from a penal report (NI 11019, introduced in the supplement as Duerrfeld Exhibit No. 469). According to this document a prisoner was punished on 5 April 1944 because he had told a civilian foreman that "his comrade had become a "Musaulman" and would go to the crematory." If such a rumor had really been generally known, such punishment would have been completely absurd. It would not have been necessary for the commandant

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to take the trouble to suppress this rumor if he had been of the opinion that everybody in the plant including the plant manager knew this rumor.

As further evidence of the lack of knowledge of selections I refer to the testimonies of witnesses before the tribunal:

(Examination Schneider on 14 April 1948, English transcript p. 11405,

" Stradal on 20 April 1948, German " p.12129-30

English " p.11926-27;

The witness testifies how he once in Camp IV himself ~~selected~~ ^{picked out} skilled workers.

(Examination Braus on 11 March 1948, German transcript p.9074, English p. 8979

Examination Oeffner 21 April 1948, German transcript p. 12262, English p. 12033

Examination Vaje 15 April 1948, German transcript p.11760, English p. 11528

Examination Boymanns 20 April 1948, German transcript p.12154, English p. 12946

Examination Kaeding 24 February 1948, German transcript p. 7660, English p. 7593).

Concerning the actual shifting of entire groups of prisoners from one camp to the other the following contemporary document and the opinion of Pohl, the chief of the SS Main Economic and Administrative Office, furnish information. Contemporary document, Duerrfeld Exhibit 374, Document No. 2318, Vol. 16, p. 19.

Affidavit Pohl Exhibit 62, Document No. 487, Vol. 3, p.117, 120).

Among the large number of testimonies concerning the fluctuation in the various ~~factories~~ ^{sections} (and in the firms of the plant) which was felt as relatively most insignificant I refer only to a few:

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(Affidavit Schneider Duerrfeld Exh. 2, Doc. 651, Vol. 1, p. 5, line 3)

Faust	15,	959,	1,	83/84	2
Sommer	64,	427,	3,	128	9
Rodiger	423,	419,	4,	68,73	
Czakalla	80,	621,	4,	81	
Dietrich	102,	405,	5,	112	14
Hocht	110,	242,	6,	48,50	
Haeseler	122,	461,	7,	23	6
Kueller	173,	273,	7,	83	8
Albert	201,	941,	8,	77/78	
Hackenschmidt	219,	812,	9,	49	2
Koll	225,	1076,	9,	69	2
Wolter	226,	1127,	9,	76	12
Wernike	227,	1140,	9,	80	
Kiesel	250,	231,	10,	58	
Czasch	270,	356,	11,	42	
Borowski	272,	393,	11,	55	
Diesel	277,	667,	11,	76	

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(Affidavit Lindemann Duerrfeld Exhibit 305, Doc. 1084, Vol. 12, p. 90			
Maister	319	1168,	13, 22
Holthey	142,	1227,	14, 56
Ottowitz	154,	1253,	14, 122,
			Line 4

As evidence that the name as well as the concept of "selections" were unknown to the representatives of the plants and firms, and that it was by no means usual to infer from the falling ill of prisoners or the transfer of a prisoner to deportation for extermination, the Defense refers to a number of additional testimonies taken from the abundance of evidence:

(Affidavit Frick Duerrfeld Exh. 34, Doc. 88, Vol. 2, p. 83/84, line			
Riess	35,	725,	2, 86/87 2-4
Schloettif	49,	174,	3, 14, 6
Feschel	54,	850,	3, 85, 10
Maurer	63,	77,	3, 123, 7
Braus	70,	429,	4, 7, 8
v. Lom	71,	47,	4, 12, 9
Fuerstenberg	77,	884,	4, 58, 61 5, 11
Fischer	85,	711,	5, 14/16, 8, 12
Brausewetter	88,	744,	5, 33, 2
Schloettig	105,	134,	6, 17
Kaufhold	107,	169,	6, 34
Hecht	110,	242	6, 50
Christ	112,	247,	6, 60, 3, 4
Gleitz	113,	266,	6, 67, 7
Hohenberger	114,	281,	6, 76,
Woolfur	116,	322,	6, 88, 6
Baelele	118,	433,	6, 104
Faber	121,	450,	7, 19
Schuster	132,	695,	7, 54, 10
Mueller	173,	273	7, 83, 6
Baelele	184,	747,	8, 13, 2, 3, 4
Krebs	187,	827	8, 27, 2-5
Witecka	193,	832,	8, 48, 7
Stroehle	194,	833,	8, 56, 7
Czisch	195,	849,	8, 59, 2, 4
Borowski	196,	948,	8, 62, 2
Saar	198,	914,	8, 66, 2
Fusch	199,	921,	8, 71, 6
Bahn	203,	967,	8, 87,
Boern	216,	634,	9, 38, 7
Alippel	218,	681,	9, 47, 2
Hackenschmidt	219,	812,	9, 49, 3
Reim	220,	862,	9, 52, 7
Schmidt	221,	917,	9, 56, 8
Mayer	222,	878,	9, 61, 6, 7
Moll	225,	1076,	9, 71, 10
Zepf	230,	1056,	9, 94, 2
Kaufmann	236,	985,	9, 117, 2
Flaschke	238,	895,	9, 124, 5
Boehnert	241,	1044,	9, 15, 8
Sennik	242,	1040,	9, 21,
Lueder	243,	993,	9, 24, 2

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(Affidavit Benz, Duerrfeld Exh. 214, Doc. 649, Vol. 9, p. 27, line 5.				
Arnold	223,	944,	9,	66
Winkler	224,	1023,	9,	67, 2,3
Walter	226,	1127,	9,	77, 17
Wernicke	227,	1140,	9,	83
Kulik	229,	1097,	9,	92
Meiller Ad.	233,	996,	9,	105, 2
Killet	237,	967,	9,	121,
Mayer	255,	928,	10,	79, 2
Daub	256,	954,	10,	81, 2
Gleitz	257,	963,	10,	83, 2
Woelfer	259,	1024,	10,	89, 2,3
Giebel	267,	110,	11,	25
Bohn	276,	625,	11,	71, 2
Knappe	280,	824,	11,	88/89 3-5
Halwert	282,	1229,	11,	116, 21
Gebhard	285,	349,	12,	16, 7
Christ	298,	953,	12,	63
Hecht	300,	970,	12,	73, 2
Hohenberger	302,	973,	12,	79, 2
Weber	303,	1021,	12,	83,
Jonasch	304,	981,	12,	85, 2
Burg	297,	951,	12,	81,
Appel	306,	943,	12,	92, 2,3
Kratsch	307,	992,	12,	94, 1
Hoeltermann	308,	1072,	12,	97, 7
Kiebel	313,	1109,	13,	5,
Baecker	314,	1128,	13,	11
Sävelsberg	315,	1007,	13,	13, 14, 5
Schmitt	317,	1014,	13,	18
Meister	139,	1168,	13,	25
Schmidt	321,	1170,	13,	31
Renner	322,	1174,	13,	36, 7
Rodiger	325,	1180,	13,	44, 2
Nickel	330,	1198,	13,	61,
Brandl	146,	1101,	14,	83, 9
Bayer	153,	1216,	14,	118, 17
Ottowitz	154,	1253,	14,	122, 4
Pauli	403,	1433,	19,	52, 5

Examination Uitaka, German transcript p. 14036, English transcript p. 13789).

Finally the Defense wants to emphasize also the extreme secrecy imposed on the guard battalions of the SS. It can hardly be assumed that SS men could have given civilians confidential information concerning any secret occurrences within their camps (contemporary document, oath of the SS man Jochum, ~~Duerrfeld Exh. 67~~, Duerrfeld Exhibit 67, Duerrfeld Doc. 874 a and b, Vol. 3, p. 137 and 39).

(Examination Muench on 11 May 1948, German transcript p. 14667/68,, 14675/76

English transcript 14328/29,

14338/41).

D. Ignorance of Mass Exterminations.

Another link of the chain used by the Prosecution in its attempt to tie the IG Plant in Auschwitz to the gruesome occurrences in the Auschwitz - Birkenau concentration camp is the allegation made by the Prosecution that the mass exterminations within the concentration camp was common knowledge in the entire neighborhood and in particular in the I.G. Farben plant. This allegation is based on affidavits and statements by 16 former British prisoners of war and by 9 prisoners.

The British prisoners of war - with the exception of the two physicians and the witness Adkins - testify in an almost stereotypic way that these things were common knowledge. But the Defense should like to point out that the witness Adkins (Prosecution Exhibit 1475, NI 11699, Vol. 75, German text p. 117, English text p. 99) testifies that they (the British prisoners of war) did not talk to others about the gassing which was known among them in the camp. They were told in the camp that it was not wholesome to make so many questions. The witness Charters explains the fact that everybody in the camp knew about the gassings as due to their seeing the trucks with the prisoners drive away from Camp IV to Auschwitz.

As to the knowledge of these British prisoners of war the Defense wishes to point out that there is no reason to wonder why in a prisoner of war camp the same rumor was known to all inmates.

It may be assumed for sure
that in view of the iron curtain

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that had been placed around the Auschwitz Birkenau concentration camp it is certain that all kinds of rumors sprang up which were retailed also to British prisoners of war. Considering the psychological conditions of a prison camp it is self-evident that naturally all rumors will spread at lightning speed within such a camp. However, from the remark of the witness Adkins it can be gathered how dangerous it was considered among the British prisoners of war to speak to German civilians about such rumors. Therefore, this by no means constitutes evidence to the effect that a rumor circulating within a prison camp did spread even beyond its fence, quite apart from the fact that it also among the British prisoners was obviously a question of rumors only and not of a knowledge of certain occurrences. But by no means has any proof been established that such rumors were *German*ly circulating also among the Germans in the plant.

(Affidavit Adkins, Prosecution Exhibit 1475, NI 11699, Vol. 75, German Text p. 117, line 7, English text p. 99).

Affidavit Charters, Prosecution Exhibit 1524, NI 11697, Vol. 79, English Text p. 27

Affidavit Fuerstenberg, Duerrfeld Exhibit 77, Doc. 884, Vol. 4, p. 61, line 11.)

An analysis of the statements of the 9 former prisoners among the prosecution witnesses leads to the same result. It is true that a number of witnesses for the Prosecution maintain to have talked to *any* civilians about gassings, but nobody was able to state the name of any such civilian or even I.G. Farben foreman or to identify them to such an extent that it would have been possible to question them on this subject. This seems the more strange as because of the danger involved in such retailing of rumors everybody must have been very prudent with respect to whom he talked to about it.

This is also confirmed by the former prisoner Hirsch, who can tell by experience what happened to prisoners talking to others about extermination of human beings. (Examination Hirsch on 21 April 1948, German transcript p. 12247, English transcript p. 12019). He even reports that there were intellectuals in the Birkenau camp who had no knowledge of the gasings, or simply could not believe it.

This is further supported by the testimony of the former SS physician Dr. Muench, who worked in the Auschwitz concentration camp, was arraigned as a war criminal for his activity in Poland but acquitted. He testifies as a witness that it was impossible for civilians outside the camp to acquire any knowledge of the gasings in Birkenau, even though in his opinion in the town of Auschwitz wild rumors in the most various forms were circulating, being partly a complete misrepresentation of facts.

(Examination Dr. Muench on 11 May 1948, German transcript p. 14678, English transcript p. 14343).

The witness Muench further testifies that according to his experiences, 90 % of the German public, in spite of the enormous publicity given to the concentration camps, still today do not believe the truth about the exterminations in Auschwitz. Should the public at that time when the people still had a certain belief in its leaders, rather than today, have considered such occurrences possible?

The defendant Dr. Duerrfeld has testified on the witness stand that he never was in Birkenau.

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that at none of his three visits for official inspections of the concentration camp and on no other occasion had he seen or heard anything from which the facts of gassing of human beings or other forms of mass extermination could be inferred.

(Examination Dr. Duerrfeld on 19 April 1948, German transcript p. 12009-13, English transcript p. 11780/84).

By the Prosecution this testimony of the defendant was not contested, neither was any proof to the opposite effect established. Although it should accordingly be superfluous to produce further evidence to prove that the same ignorance prevailed in the surroundings of the defendant as well, with his superiors and his associates, and also with the employees of the firms and the representatives of authorities, the Defense should like to cite a number of testimonies of witnesses and affidavits selected from its evidence which is especially abundant with reference to this particular point. I refer in particular to the affidavit of the affiant Goerth, who as many others spontaneously made his affidavit available to the Defense. (Examination Krauch on 14 January 1948, German transcript p. 5271, English p. 5245/46.

Ter Meer on 17 February 1948,	German tr.p.7222,	English p. 7164
Giessen on 24 February 1948,	7605	7540
Bustafisch on 9 March 1948,	8871	8789
Braus on 11 March 1948,	9074	8979
H. Schneider on 14 April 1948,		11407
Stradal on 20 April 1948,	12133,	11929/30
Boymanns on 20 April 1948,	12154/55	11946
Geffner on 21 April 1948,	12262,	12033.

Affidavit Riess, Duerrfeld Exhibit 35, Doc.735, Vol. 2, p. 87, line 5			
Heitsmann,	76,	259,	4, 53
Daub,	75,	238,	4, 43
Fuerstenberg,	77,	884,	4, 54
Kaeding,	79,	463,	4, 78
Mueller	81,	630,	4, 89, 8
Czekalla,	80,	621,	4, 82
Braus,	70,	429,	4, 8, 9
Schwerin-Krosig,	84,	694,	5, 12, 6

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Affidavit Fischer, Duerrfeld Exhibit 85, Doc. 711, Vol. 5, p. 16, line 12					
Eckert	97,	743,	5,	82,	7,8
Dion	92,	783,	5,	57,58	8
Hieseler	122,	461,	7,	25,	8
Kleinpeter	130,	669,	7,	44,	3
Burghaus,	131,	684,	7,	49,	4
May	171,	187,	7,	74,	
Kueller	173,	273,	7,	87,	16
Richter	175,	335,	7,	97,	6
Woelfer	176,	344,	7,	102,	7
Frey	179,	498,	7,	123,	10
Sieglo	183,	729,	8,	9,	7 II
Haefele	184,	747,	8,	14,	5
Krebs	187,	827,	8,	27,	6
Pallaska	188,	838,	8,	32,	6
Lena	192,	702,	8,	42/43	2,3
Stroehle	194,	833,	8,	56,	8
Gzasch	195,	849,	8,	59,	3
Borowski	196,	948,	8,	62,	3
Saar,	198,	914,	8,	66/67,	3
Fusch	199,	921,	8,	71,	6
Bardubitzki	202,	946,	8,	82,	7
Hahn	203,	967,	8,	88,	
Rech,	208,	854,	8,	110,	4
Zopf,	230,	1056,	9,	94,	3
Unterstenhoefer	228,	1088,	9,	89,	
Koehler	231,	1083,	9,	97,	
Boehmert	211,	1044,	9,	14,	7
Schultz-Bundte,	263,	804,	10,	122,	8
Gleitzmann	251,	330,	10,	62,	
Mayr	253,	680,	10,	72	6,7
Daur	256,	954,	10,	81,	3
Woelfer	259,	1024,	10,	90,	4
Heide	260,	1031,	10,	94,	
Gleit,	257,	963,	10,	83,	3
Jaeger	258,	979,	10,	87,	
Giebol	267,	110,	11,	25,	
Helwert	282,	1229,	11,	116,	21
Schroeter	274,	401,	11,	64,	
Knappe	280,	824,	11,	89/90	7,9
Gzasch	270,	356,	11,	42,	
Wagner	264,	167,	11,	9,	7
Dietz	265,	103,	11,	15,	
Hohenberger	302,	973,	12,	79,	3
Kalsacher	311,	679,	12,	110,	7
Blumel	332,	1094,	13,	69,	6,7
Runner	322,	1174,	13,	35,	3
Roodiger	325,	1160,	13,	44,	4
Viol,	316,	1151,	13,	16,	6-6
Schmidt	321,	1170,	13,	31,	
Spazier	318, 318	1152,	13,	21	
Barnewitz	312,	1161,	13,	3	
Sevelsberg	315,	1007,	13,	14,	6
Wittig	139,	1208,	14,	43,	
Brandl,	146,	1101,	14,	86,	17
Kraschewski	394,	1422,	19,	7	
Goerth	396,	1424,	19,	21	
Ulmer	401,	1430,	19,	47,	6
Dahl	402,	1431,	19,	49,	6
Droher	444,	1444,	19,	113,	

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The Prosecution now further assumes that the leaders of the I.G. Farben plant must have acquired knowledge about the mass exterminations in Auschwitz because numerous garments from the Auschwitz concentration camp were turned over to the plant for distribution to the foreign workers.

The defendant Dr. Duerrfeld has explained these facts as completely natural and unsuspecting and his statements have not been refuted. They were at that time told by competent authorities that it was a question of clothing items from the resettlement operation which had been collected in the Auschwitz concentration camp.

(Examination Dr. Duerrfeld on 16 April 1948, German transcript p.11885/86, English transcript p.11673/74).

This offer of help did not appear in any way improper neither to Dr. Ambros, nor to Dr. Duerrfeld, nor to Chief Engineer Faust, nor to Dr. Savelberg and Dr. Rossbach. The latter were entrusted with the technical implementation of the taking over and settling of accounts for the garments, and they had not expressed any reason for suspicion whatsoever either, nor had they, as ascertained, any knowledge of the extermination measures in Auschwitz.

But reversely, it would certainly have been an inhuman act not to accept this offer of help and consequently to have allowed 1000 female eastern workers and 500 Croats to freeze.

(Weekly report Duerrfeld Exhibit 381, Dec. 1401, Vol. 17, p. 23

"	"	384,	1404,	17,	37
Affidavit Pohl,		66,	93,	3,	2
Savelberg		351,	426,	14,	61/63

Further circumstantial evidence of the knowledge of the mass exterminations the Prosecution finds in its allegation that the I.G. Farben delivered the methanol used to cremate the corpses.

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This allegation the Prosecution has based on the statement of a former prisoner Pfeffer, who maintains that he heard this in a laboratory.

Besides this statement based on nothing but hearsay, no additional evidence of deliveries of methanol to the concentration camp has ~~altogether been produced~~ ^(at all). Moreover, the statements also of this witness for the Prosecution are extremely questionable. Some witnesses have elaborated on this.

(Affidavit Frick, Duerrfeld Exhibit 410, Doc. 1447, Vol. 19, p. 89

Christ	411,	1419,	19,	96
Spaenig,	155,	1087,	15,	24).

Neither did the defendant know anything about a delivery of a ~~fuel~~ ^{fuel oil} ~~fuel~~ of methanol to the concentration camp, nor would it have been possible through the Auschwitz plant, if such a delivery was really made, to influence the question of delivery or non-delivery in any way, since the dispatch orders for this ~~manufactured~~ ^{controlled} product were issued by the Reich Office for Chemistry from Berlin. Besides, in the Auschwitz plant it could not have been assumed that the methanol would have been used for any other purpose than as fuel for motor vehicles, as it was generally used by the SS in Germany because of the shortage of gasoline.

(Examination Dr. Duerrfeld on 19 April 1948, German tr. p. 12008,
English p. 11779
Giessen on 24 February 1948, German tr. p. 7606,
English p. 7542/43
Braus on 12 March 1948, German tr. p. 9079,
English p. 8985.

Affidavit Giessen, Duerrfeld Exhibit 156, Doc. 1225, Vol. 15, p. 27

Krastel	175,	1214,	15,	31
Savelsberg,	158,	1035,	15,	33
Guthrecht,	159,	1204,	15,	35).

The Defense was able to clear up and to refute this particular allegation of the Prosecution exhaustively

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because all persons involved in the matter are still alive and in the country.

E. No Internal Connection Between Concentration Camp and I.G. Farben.

Summarizingly the Defense has to establish in answer to the allegation of the Prosecution linking the I.G. Farben with the now well-known gruesome occurrences in the Auschwitz concentration camp that according to the result of the case-in-chief not one single link of the chain of evidence introduced by the Prosecution has remained unrefuted.

This result is not changed either by the affidavit Ungar (NI 15299) introduced by the Prosecution shortly before the conclusion of the case-in-chief of the Defense as Rebuttal-Exhibit 2262. The affidavit is a brief and in part misleading summary of more than 700 pages of SS documents from Camp IV. These documents cannot be-
cause of the shortness of time be evaluated not even ~~tentatively~~ ^{approximately} but fundamentally it can be established that the exhibit is incapable of refuting any of the contentions of the Defense. On the contrary it proves, supporting the interpretation of the Defense, that the I.G. Farben had nothing to do with the camp administration, with the treatment of sick prisoners, and the transfer of prisoners to other camps, for in all these documents there is not one single reference to any implication of the I.G. Farben in internal camp affairs.

Attached to the affidavit are the following documents:

- 1.) a mortality record (NI 15205) which in the foregoing

(Section IV H) has already been used as proof of the unreliability of the alleged figures of casualties and deaths among the prisoners within the I.G. Farben area.

2.) a very comprehensive collection of SS-documents from Camp IV.

As to the first document the Defense should like merely to point out that it must appear misleading when it mentions 1647 names or numbers of prisoners who "perished with the I.G. Farben Auschwitz, 1.6 in the I.G. Farben construction area, as well as in the so-called Camp IV of the I.G. Farben, the Monowitz concentration camp." Actually the figures for the two years and three months are broken down as follows:

27 men shot to death by the SS (attempting to escape from labor Kommandos)

32 men killed in air-raids

78 men killed in labor Kommandos (accidents etc.)

1512 men died in the SS labor camp.

The second document only shows that numerous transfers from Camp IV to the Auschwitz ^{and Birkenau} camp actually took place. The documents are transport slips for persons transferred as sick or unfit for work from Camp IV to the ^{main} original camps.

More than a third of the transfers does not indicate any sickness as cause so that the reason or purpose of the transfer cannot be recognized. In the case of more than 250 transfers it is clearly recognizable that it is a question of transfer of physicians or other professional workers or of transfer for X-ray examination. The rest of the lists contains more than a hundred different diagnoses of pathological conditions. In 55 cases the designation "collapse" is used, which according to German usage may mean mainly either

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nervous breakdowns or convulsive conditions. The German word "Zusammenbruch" (breakdown) is not used in any case. The diagnosis "general physical debility" is used in numerous cases which merely refer to the fact that the SS camp administration or the responsible physician deemed the prisoners concerned unfit for employment as workers in the labor camp.

This 2. document, however, does not contain any reference which might suggest:

- 1) that the transfers were occasioned or effected by the I.G. Farben,
- 2) that the I.G. Farben and the defendant Dr. Duerrfeld in particular were even aware of these transfers,
- 3) that the reasons for transfer could in any way have any causal *which could not be expected to be done by them* connection with any ~~excessively exacting~~ job and in particular these documents do not permit a conclusion as to
- 4) what happened to the transferred prisoners in the original camps, for which the I.G. Farben could certainly not be held responsible.

It does not appear from the document that the transferred prisoners were not admitted to the sick barracks or hospitals of Auschwitz or Birkenau, since Camp IV was equipped only for service of ambulatory patients.

Further, it is possible that it was a question of transfer to another labor camp *main* through the original camp, which certainly was necessary in order to comply with the rules of administrative processing.

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The only remaining question which requires an examination is whether the I.G. Farben ought to have found the number of transfers remarkably large and whether this fact ought to have aroused its suspicion.

However, according to the statements of the defendant and the evidence concerning the reasons accepted as natural for the small fluctuation actually observed from time to time, this question can be met with a clear denial. (See the exposition under Section V C).

However, the reasons why the transfers could not be noticed to this extent, will be summarized here once more in order to make the matter quite clear.

- 1) Transfer of prisoners within the Kommandos by the SS (internal fluctuation). From today's standpoint one has to assume that these transfers were effected
 - a) as camouflage,
 - b) as arbitrary measures,
 - c) by order from higher quarters to prevent prisoners from having close contacts with civilians.
- 2) Frequent transfers of entire Kommandos from one firm to the other.
- 3) Dissolution of Kommandos upon completion of their tasks and formation of new Kommandos of a different composition.
- 4) Transfer to other labor camps.
- 5) Shifting of entire groups of prisoners by order from higher quarters (Poles, Russians).
- 6) Continual fluctuation of labor ^{advertising - camp} ~~training~~ prisoners.
- 7) No report of departures from the camp, combined with a continual rise in the aggregate number of prisoners committed to the camp.

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Only a biweekly report on the total number of prisoners to the defendant. If it is considered, in view of these reasons, that within the period covered by a report it was a question of approximately 10 men per day compared with an average number of camp prisoners of about 6,000 and at the end, 9,000 men, then such relatively insignificant fluctuation could not possibly be noticed by an outsider.

If the objection should be raised against this that the transports of prisoners on trucks must have been noticed, then it must be pointed out that it was a usual occurrence to see prisoners be driven on trucks to the working places outside the camp, in particular for building of positions for anti-aircraft guns.

But even if one or the other employee of the plant might have found something suspicious in these transfers, the question whether the I.G. Farben had been able to do anything about it must be absolutely denied. In this connection I must refer to the remark of the Prosecution witness Coward on the witness-stand who states that he reported to the Geneva Red Cross Delegation on the general conditions in Auschwitz, whereupon the delegation declared that they were unable to do anything about it.

(Examination Coward on 12 November 1947, German transcript p. 3710,

English transcript p. 3687).

To what extent the defendant, in particular, tried to counteract the fluctuations that were known to him though on a much smaller scale, already in order to avoid losing trained prisoners to other labor camps, is illustrated particularly by the following: In a written petition the defendant Dr. Duerrfeld suggested to the SS to raise the premium system

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for the benefit of the prisoners to quite another level through paying additionally 50 pfennig per day and worker for each prisoner for every six months worked on the construction site. This would have meant that the I.G. Farben would have paid on its own initiative and in addition to the normal pay 2 RM per day to every prisoner who e.g. had been 2 years in Camp IV. For some or other formal reasons this suggestion was rejected from Berlin!

(Affidavit Maurer, Duerrfeld Exhibit 63, Doc. 77, Vol. 3, p. 122, line 7

Sommer 64, 427, 3, 130, 9).

Is any clearer proof needed to show that transfers were not only not wanted by the plant management, but that they tried to prevent them?

The Prosecution believes through introduction of a letter from a small employee of the I.G. Farben (Prosecution Exhibit 1497, NI 838, Book 77, p.1) to characterize the spirit of the I.G. Farben and to be able to identify it with that of the SS in Auschwitz. The defendant Dr. Duerrfeld in honest indignation has against this imputation dissociated himself from the author of this letter and testified that the spirit of this letter was by no means the spirit of the plant management.

(Examination Dr. Duerrfeld on 19 April 1948, German transcript p. 12003,

English transcript p. 11776),

If the defendant Dr. Duerrfeld had cherished intolerant racial ideologies, it would also have been impossible for him to give half-Jews protection and work in the Auschwitz plant and still in 1944 to want to win another as an associate in the plant.

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(Affidavit Wodel, Duerrfeld Exhibit 349, Doc. 1207, Vol. 14, p. 29, line 1

Klemm,ath,	360	410,	15,	66,
Bruestle,	350,	380,	14,	32).

Neither would the defendant whenever he had a possibility have tried to use his influence for the benefit of individual prisoners as well as for entire groups of prisoners.

(Examination Dr. Duerrfeld on 19 and 20 April 1948, German transcript p.12026, English transcript p. 11797).

The letter from the Prosecution witness Huber with its cry for help to the defendant in 1944 was and is still the best proof of the fact that the prisoners trusted the defendant.

(Examination Dr. Duerrfeld on 19 April 1948, German transcript p. 12029, English transcript p. 11799,

Affidavit Farny, Duerrfeld Exhibit 109, Doc. 205, Vol. 6, p. 45

Faber,	162,	913,	15,	38).
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Hundreds and thousands of prisoners owe their sustention of life and health to the measures of the defendant and the I.G. Farben, in particular those 700 prisoners abandoned helpless and locked up by the SS to whom the defendant Dr. Duerrfeld opened the road to freedom.

(Examination Dr. Duerrfeld on 19 April 1948, German transcript p. 12033, English transcript p. 11803,

Affidavit Wagner, Duerrfeld Exhibit 264, Doc. 167, Vol. 11, p. 4, line 4),

and if the spirit of the plant had been identical with that of the SS, no human contacts in spite of the dangers involved would have developed between prisoners and plant employees, which some employees paid for with their freedom, in one case even with the life. The Defense refers to numerous exhibits which mention the helpfulness of the plant management and individual plant employees towards prisoners, addresses of thanks, and liberation of prisoners.

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Affidavit Bayer, Duerrfeld Exhibit 83, Doc. 677, Vol. 5, p. 6, line 1)					
Appel	93,	429,	5,	64,	
Frick	94,	87,	5,	69,70	6
Jatzenowski	124,	105,	5,	105	
Dietrich	102,	405,	5,	110/111	10
Farny	109,	205,	6,	44,	
Christ	112,	247,	6,	63,	12
Hasfelle	118,	433,	6,	107	
Zahn	190,	365,	8,	37/38	
Benz	214,	649,	9,	27	6
Walter	226,	1127,	9,	73,	1
Dietze	265,	103,	11,	16,	
Hackenschmidt	268,	218,	11,	32,	
Mueller	269,	341,	11,	37,	
Schroeter	274,	401,	11,	64,	
Killet	283,	119,	12,	11,	
Lowski	284,	173,	12,	13,	2
Kinder,	290,	894,	12,	37,	4
Bräun	291,	899,	12,	40,	
Adolphi	294,	935,	12,	50,	
Althof,	295,	940,	12,	52,	
Wittmer,	337,	1249,	13,	85/86	
Brandl,	146,	1101,	14,	82,	7
Frick	150,	91,	14,	102,	
Bayer,	153,	1218,	14,	119,	20
Killet	355,	111,	15,	10,	
Seeliger,	356,	129,	15,	12,	
Lehnert,	357,	722,	15,	14,).	

The most conclusive evidence to the effect that there was no enmity between the prisoners and the I.G. Farben, and that the I.G. Farben was not regarded as an "inferno" by the prisoners, are the following undisputed facts:

- 1) During the 2 years and three months which was the time of existence of prison Camp IV only one single regrettable case of suicide occurred committed by a prisoner in the plant, although the facilities for committing suicide were indeed much more convenient in the plant than anywhere else or than in any camp (high buildings, 30,000 volts wires, etc.)
- 2) No acts of resistance on the part of the prisoners.
- 3) No attempted breaking out or escape by groups of prisoners during the air-raid alarms, on which occasions an escape was indeed easily practicable.
- 4.) Not a single act of sabotage effected by the prisoners against plant installations.

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(Examination Dr. Duerrfeld on 16 April 1948, German transcript p. 11889,
English transcript p. 11677.

Examination H. Schneider on 14 April 1948, English transcript p. 11408

Affidavit Dr. Eisfeld, Duerrfeld Exhibit 69, Doc. 687, Vol. 4, p.3, line 8

Schloettig	105,	134,	6,	18	
Hecht	110,	242,	6,	48	
Hohenberger	114,	281,	6,	71	
Jonasch	172,	245,	7,	79	
Faust	239,	1115,	9,	130	
Haeferle	149,	421,	14,	100,	5).

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VI. Social-Minded Attitude of the Plant Management in Particular with Regard to the Foreign Workers.

A. As a rule, the foreigners enjoyed the same privileges as the Germans.

Under Count III, the prosecution has accused the defendant Dr. DUERRFELD of having had a hand in enslaving foreign workers and in bringing about maltreatment of such workers.

Testifying on his own behalf, the defendant Dr. DUERRFELD commented in detail on these general accusations, and he has proved that the I.G. Auschwitz Plant generally afforded the foreign workers a great measure of liberal and magnanimous concessions. His testimony in particular, as well as the overwhelming amount of evidence submitted by the defense, shows that there was one very compelling reason in the Auschwitz Plant to have decent social welfare conditions for all co-operative foreigners, namely that the plant urgently needed their ready co-operation because of the small number of German managerial and supervisory personnel, and because, in actual fact, there was no effective way of stopping the foreigners from leaving their job on the building site. For practical and technical reasons, the defense would like to emphasize this fact because the prosecution does not consider it possible that the management of the Auschwitz I.G. Plant could have introduced the above mentioned measures simply because they thought it would be a humane measure.

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The case in chief shows one important thing: practically, the Germans and foreigners were treated on almost completely analogous lines. Their camps were alike, to all intent and purposes they received the same food, the same medical care, recreational facilities and pay, just like the Germans quite apart from the fact that in this case too, government instructions regulated many aspects of such arrangements.

Examinations Dr. Duerrfeld on 16 April 1948

concerns: Accommodation, German Transcript		Pages/Engl. Page
"	Food rations, "	11868 to 72 11657-61
"	Medical care, ;	"11872 to 77 11661-66
"	Clothing, "	"11877 to 82, 11667-71
"	Recreational facilities "	"11882 to 86 11671-74
"	Wages and salaries	"11887 to 88 11674-76
"		"11888 to 89 11677-

The defendant Dr. DUERRFELD also testified that, practically no excessive amount of workers left their jobs on the building site (examination Dr. Duerrfeld on 19 April 1948, German Trans. Page 12018, E.P. 11788/89).

Furthermore, the plants most outstanding expert in this field, City Director Schneider, corroborated the defendant's statements to a large degree in his testimony (Exam. Schneider on 14 April 1948, Trans. E.P. 11396).

Moreover, a contemporary document, dating back to the time in question, will show that the competent French Delegation called the French Camp of the Auschwitz Plant a veritable model camp (Duerrfeld Exh. 11, Duerrfeld Doc. 1055, Book I, P. 63).

In addition, the British Camp was adjudged one of the best POW Camps by a delegation of the Geneva Red Cross. (Unfortunately, the pertinent document at the secretariat of the Geneva Red Cross in Geneva is not obtainable. However, the above fact has been confirmed by the testimony of the witness Schneider, see paragraph 18).

(Examination Schneider on 14 April 1948, E.P. 11408).

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The authorities were unanimous in their praise of all the housing camps of the Auschwitz I.G. Plant, calling the whole complex the very best housing camp in Upper Silesia, and the Auschwitz Plant received a diploma for its organizational efforts at that time.

(Exam. Duerrfeld on 16 April 1948, Trans.G.P. 11872,E-P. 11660/61).

By submitting the originals of sub-contracting agreements with outside constructions and assembly firms, the defense has proved that an absolute equality in treatment prevailed for the foreign workers and the German workers, and that, sometimes, the foreign workers were treated even better;

Duerrfeld Exh.	6,	Doc.	Doc.	1050	Book	I	P	34
"	"	7,	"	"	1051	"	I	P 35
"	"	5,	"	"	1049	"	I	P 27
"	"	9,	"	"	1053	"	I	P 48
"	"	8,	"	"	1052	"	I	P 45
"	"	2,	"	"	651	"	I	P 7/8

The fact that the foreign workers generally enjoyed the same conditions as the German workers and that they were incorporated in an irrefragable social welfare scheme is not refuted by the prosecution in its rebuttal evidence, in which it mentions temporary accommodation bottlenecks occasioned by the war, for example, the failure to supply washing barracks for some groups of the workers during the initial constructions period. Such temporary difficulties can by no means be called a proof of an inhumane system, but they merely were symptomatic for the government controlled war economy and its repercussions in the ~~third~~ ^{through the} sixth year of the war. At any rate, all the difficulties were overcome.

If the prosecution points out that some Germans had been living in single and double bed rooms, but that on the other hand Eastern workers were accommodated in single rooms up to 20 at a time, the defense sees itself compelled to refer to the actual evidence introduced in the case in chief; according to this German and Russian white collar employees (i.e. Men in responsible positions such as

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Engineers, chemists, executives of the sales and purchasing departments, foreman) lived in small rooms with from one to four beds, and both German workers as well as the Eastern workers, for example, lived in large rooms, each room accommodating up to 20 men. I am pretty sure that this condition exists all over the world, i. e. that executive employees who also have to pursue duties after office hours, are living ⁱⁿ better homes than ordinary workers. (Exam. Faust on 8 April 1948, Trans. G.P. 14279 to 21, E.P. 13978/80).

As for punishments meted out to civilians, the prosecution has submitted only one incriminating document, the affidavit of a former German factory guard who at present is in a Polish prison. The defendant commented on this affidavit when on the witness stand and refuted the erroneous statements mentioned therein. Unfortunately, it was impossible to have the witness up here for cross-examination (Exam. Due. on 15 April 1948, Trans. G.P. 11904, E.P. 11692).

In addition, the prosecution in its rebuttal submitted some excerpts from weekly reports which contain entries concerning punishment of foreigners. However, these rebuttal documents do not show at all that the I.G. violated the absolutely necessary regulations. Furthermore, none of these documents mentioned that the defendant was involved in this. Nowhere was the prosecution successful in proving that the Auschwitz Plant had initiated unjustified punishments, or that the plant itself had decreed any such punishment (Exh. 2208, N.I. - 15254, Book 93, G.P. 30, E.P. 31). Now, the prosecution accuses the Auschwitz Plant of having had a label ~~report~~ ^{education} camp in Camp IV

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This camp has been set up by the initiative of
 and it is claimed that the defendant Duerrfeld, ~~arranged the~~
~~setting up of this camp.~~ However, the prosecution failed to
 prove the last mentioned assertion.

On the other hand, the defense has proved through several
 witnesses that the labor reform camp concerned had been
 established following an unmistakable decree of the State
 Police against the express protests on the part of the
 defendant.

(Exem. Due. on 16 April 1948, Trans. G.P. 11897/98, E.P. 11685/86
 " Koeding 24 Febr. 1948, " " 7658, " " 7591
 " Due. 16 April 1948, " " 11906, " " 11694
 Affid. Schneider, Exh. 144, Doc. Due. 905, Book XIV, Page 73
 " Jastrzenbski, Exh. Due. 251, Doc. Due. 361, Book X, Page 67
 " Gleitsman, Exh. 76, Doc. Due. 259, Book IV, Page 49)

Furthermore, the defense has submitted ample evidence
 concerning the procedure of committing notorious loafers
 to the labor ~~reform~~ ^{education} camp, i.e. such elements who had made
 it their habit to work only some days during the week, and
 who stayed away from work at irregular intervals.

Affid. Schneider Due. Exh. 2, Doc. Due. -651, B 1, P. 17/20	Sec. 10
" Fischer Fritz Due. Exh. 85, Doc. Due. 711, Book 5, P. 15	Sec. 9-11
" Woolfer " " 116, " " 322, " 6, " 89,	Sec. 10
" Buhlen " " 120, " " 442, " 7, " 8,	Sec. 4
" Frey " " 179, " " 498, " 7, " 120	Sec. 6
" Schmidt Franz " " 207, " " 1036, " 8, " 101/2	Sec. 6
" Schneider " " 144, " " 905, " 14, " 72	Sec. 7
" Brandl " " 146 " " 1101, " 14, " 85	Sec. 16).

During cross-examination, the witness Faust expressly
 stated that all commitments to the labor reform camp were
 ordered by the labor trustee and/or the State Police authori-
 ties, and this was not done because the foreign workers
 did not work enough, but only when they didn't come to work
 at all. The fact that, as a rule, POW's could not be commit-
 ted to a labor ~~reform~~ ^{education} camp proves that the excerpt from a
 weekly report, submitted in rebuttal exhibit 1990 NI-14549, is
 nothing more than an expression of passing annoyance and
 by no means a formulated instruction.

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Finally, the temporary organization of the so-called for-special- purposes detail ^(El. V. Kolonne) cannot be called an unjustified measure because a transfer to such a plant section was quite in keeping with the rights of a plant leader, according to the law, and, furthermore, this organization was subject to inspections by the authorities.

(Exam. Due, dated 16 April 1948, Trans. G.P. 11900/01, E.P. 11688/6 Affidavit Faust Due. Exh. 145, Doc. Due. 474, Book XIV, P. 75

" Haeferle " 118, " 443, " VI, P. 106)

At any rate, there was no corporal punishment nor any confinements in the plant.

(Exam. Due. on 16 April 1948, Trans. G.P. 11904, E.P. 11691).

Quite apart from the above-mentioned facts, any excesses against civilian workers were prohibited, and this point has been dealt with in detail under paragraph IV J. Here, I merely want to refer to some defense evidence which deals in particular with the civilian workers problems.

(Affid. Machs Due-Exh. 82, Doc. Due-640 Book IV p. 94 Sec. 7

Wittig	104	117	VI	11	
Gleit	113	266	VI	67	6
Hohenberger	114,	281	VI	73	
Blaese Gis.	117	416	VI	96	2
Boehnert	211	1044	IX	17	11
Boehn	216	634	IX	40	11
Klippel	218	681	IX	48	4
Schmidt	221	917	IX	57	11
Meyer	222	878	IX	61	10
Bohn	276	675	XI	72	6
Helwert	282	1229	XI	115	11).

The witness Stradel recalled 2 cases where people were punished because of beating workers. Their punishments was ~~detention~~ ^{corporation} and/or fines. The affiant Brandl testified the same concerning a similar punishment. (Exam. Stradel on 20 April 1948, Trans. G.P. 12126, E.P. 11924 and Affid. Brandl Due. Exh. 146, Doc. Due 1101, Book XIV, P. 81, Section 4).

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I do not wish to conclude my array of evidence proving the unimpeachable attitude of the Auschwitz I.G. Plant management towards foreign workers and their total equality with the German workers without mentioning the large number of statements, submitted by former plant employees, and comprising all kinds of employees down to the workers, as well as by outside firms, officials, and visitors.

(Affid. Schneider Doc-Exh. 2 Doc.Duc-651 B I P.9 Section 4

Rainhold	23	69	II	7/8	
Rainhold	24	70	II	18-21	" 24
Bohn	25	58	II	30/31	"
Riess	30	143	II	44/57	
Peschel	31	150	II	66/69	
Krist	45	126	III	30,33	
Peschel	54	850	III	83	
Daur	75	238	IV	43	
Roediger	423	419	IV	76	
L.Mueller	81	630	IV	85	" 3
Bayer, Leo	83	677	V	6	" 1
Hoesch	87	722	V	23-25	" 2/3
Dr. Eggert	89	763	V	41	" 6
Bartke, Marg.	91	779	V	49-52	" 2,3,4
Dion	92	783	V	56	" 2,3,4
Appel	93	420	V	64-66	
Frick	94	87	V	68	
Floto	95	414	V	73/74	
Pabst	96	645	V	77/78	" 3-6
Klippel	101	61	V	98/99	" 2,3
Wittig	104	117	VI	7/10	
Hecht	110	242	VI	49	
Blaese	117	416	VI	96	" 1
Buhlan	120	442	VII	12	" 12
Dressel	127	469	VII	30	
Klotz	128	633	VII	34	" 2
Szepanski	129	653	VII	39	" 3,4
Kleinpater	130	669	VII	43	" 2
Eger	169	495	VII	65	"
W.Mueller	173	273	VII	84	" 13
Knappe	174	301	VII	89	" 2
Frey	179	493	VII	119	" 5
Wallaske	138	838	VIII	29/30	" 2
Stroehle	194	833	VIII	54	" 3,4
Siegle	133	729	VIII	16,8,20	" 2,4,1
Pasch	199	921	VIII	70	" 2,3
Roth	200	922	VIII	73	" 2
Bardubitzki	202	946	VIII	81	" 3,4
Schmidt, Franz	207	1036	VIII	98-101	" 2-5
Boehnert	211	1044	IX	10	" 3
Walter	215	489	IX	32	
Schmidt	221	917	IX	54	" 2
Meyer	222	878	IX	59	" 2
Lueckel	245	837	X	36	" 2
Kiebel	250	231	X	58	
Aug.Meyer	254	927	X	75	" 3
Schultz-Bundte	263	804	X	119-24	" 2-5
Wagner	264	167	XI	1/2	

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Affid.	Dietze	Due-Exh.165	Doc. Due.-103	B XII B.	14	
	Giebel	266	109	XI	20-22	
	Mueller Ad.	269	341	XI	36	
	Gansch	270	356	XI	40/41	
	Borowski	272	393	XI	55/56	
	Schroeter	274	401	XI	64	
	Hoffmann, Bernh.	279	819	XI	83	3/4
	Helwert	282	1229	XI	106-09	12-15
	Killet	283	119	XII	9	
	Blume	287	398	XII	23	
	Gruhn	288	631	XII	27	2
	Kinder	290	894	XII	36	3
	Zehn	310	907	XII	103	a
	Renner	322	1174	XIII	34	1
	Bluepel	332	1094	XIII	67	2-4
	Serk-Wurm	339	1041	XIII	92	
	Brandl	146	1101	XIV	79	3
	Siepenkothem	398	1426	XIX	31	3
	Dahl	402	1431	XIX	48	2)

B. The Plant Social Welfare Schemes and their favorable reception on the Part of the Foreigners.

At the end of this paragraph, the defense would like to state briefly the extent of the social welfare schemes which the Auschwitz Plant introduced and established in those few years of construction, and at that in a region which was rather backward as compared to modern civilization. The defense mentions those facts for the sole purpose of proving that the plant management, which was successful in overcoming the tremendous difficulties with which it was confronted owing to the war and which was able to achieve such gigantic accomplishments in spite of the isolated location could not possibly have been guided in its action by unsocial considerations. The defendant Duerrfeld testified as to the impressive tasks at hand and their almost total fulfillment, and he did not conceal that, as a matter of course, everybody who assisted in such a pioneer^{task} had to put up with many inconveniences during the construction period. However, he proved through many examples and through pictures, that no stone was left unturned, and that neither effort nor funds were spared in order to make all the people engaged in this task comfortable both at work and in their leisure time.

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The plant management was fully aware of the fact that here it was a question of preserving the social reputation of the I.G. and to create a new plant which, both during the war and especially after the war, was to be a collecting point for the best workers who, at the time when all controls would be relaxed, were meant to lend their voluntary and full-hearted assistance to this great work.

Numerous witnesses have confirmed and substantiated the defendants statements. I would like to refer to the statements made by the competent ~~factory officer~~ ^{plant inspector} Vaje, who considered it as particularly significant as a proof of social mindedness that the I.G.. to top it all, initiated and completed a hospital construction project for the towns civilian population. (Exam.Vaje on 15 April 1948, Trans. G.P. 11,756, E.P. 11524).

Furthermore, we want to mention the examination of the witness Feige who learned of the excellent reputation of the plant in Berlin even before he took up employment with the I.G., which was about the middle of 1942, (Exam. Feigs on 20 April 1948, Trans. G.P. 12094, E.P. 11893), and finally the statement of the witness Stradel who was under the impression, when he joined the I.G. in 1942, that "all social welfare measures appear to have been excellently and most liberally instigated". He has stressed that the plant management was less concerned about the office rooms and the vario places of work, but that it was their foremost task to secure as a primary prerequisite, the personal happiness of its workers.

(Exam. Stradel on 20 April 1948, Trans.G.P. 12117, E.P.11915/16
 " Kaeding 24 " " " " 7663 " " 7596
 " Schneider 20 February " " " 7501 " " 7440/42)

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From statements which confirm this fact in the form of affidavits, I would like to single out in particular the extremely comprehensive account concerning the settlement of all pending social problems, which is contained in the affidavits of the very critical I.G. employees Helwert, Geittner, and Wallisfurth who were with that company only for a very short period. All three witnesses left the plant at a very ^{early} date because of personal differences, and they have no reason to sing the praise of the work in the Auschwitz Plant.

Affid.	Helwert	Due-Exh.	282	Doc. Due-1229	B.XI	P.95-101	Sect.
Geittner	262	1145	X	101	1		
Wallisfurth	98	464	V	87			
Eichler	13	227	I	72			
Reinhold	23	69	II	6			
Daub	61	1027	III	113	6		
Sitzenstuhl	73	149	IV	32/34	2		
Czekalla	80	621	IV	80			
L.Mueller	81	630	IV	93	2		
Farny	109	205	VI	44			
Hoeseler	122	461	VII	21	3		
May	171	187	VII	71			
Woelfer	176	344	VII	99	2		
Frey	179	498	VII	118	3		
Boehnert	211	1044	IX	10	4		
Penn	214	649	IX	26	4		
Boehn	216	634	IX	35	2		
Reim	220	868	IX	51	4		
Meyer	222	978	IX	59	1		
Meyer Aug.	254	227	X	74	2		
Killet	283	119	XII	8/9			
Flume	297	398	XII	24			
Gruhn	288	631	XII	29	4		
Nierste	289	675	XII	34	6		
Jonasch	309	981	XII	86	5		
Hess	320	1160	XIII	29			
Neumann, Urs.	335	1247	XIII	78			
Meinck	346	626	XIV	18			
Siebenkothen	398	1426	XIX	30	2		
Koehler G.	416	1421	XIX	114	2-4		

We want to refer to some considered opinions as made by various foreigners, which the defense could use in its case in chief, in order to evaluate the plant managements social-mindedness towards its workers, and by that I mean not only towards the German staff, i.e. the I.G. employees and outside firms personnel of all types as well as officials. In this connection it must be said that the defense found it almost impossible to contact foreigners who worked in the Auschwitz Plant at that time.

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The defense specially mentioned this fact in its final plea by referring to the corresponding evidence.

(Affid. Frick Due-Exh.	360	Doc.Due.410	B.XV	P.	65
Affid. Matthiessen	361	860	XV	"	72
Brief VVN	362	1259	IV	"	75
" Hoedemakers	363	1261	IV	"	76
" Haschke	364	1262	IV	"	78
" F.	365	1263	IV	"	79
Affid. Gagger	366	1223	XV	"	80).

Examination Fuerstenberg on 10 May 1948, Trans.G.P. 14460,E.P. 14228.

There was neither a chance to travel abroad nor was it possible to arrange an unhampered correspondence. Also, several former foreign employees of the plant have submitted the understandable request not to be quoted nor to make any statements so that they could not be prosecuted for collaborationist activities or even for any possible connections with the former Auschwitz Concentration Camp. However, amongst the statements to which the defense was able to refer are those of Frenchman and Dutchmen, Hungarians, Poles and Swiss citizens.

(Affid. Malsacher Due-Exh.	191	Doc.Due-660	B VIII	P.	40/41
Jastrembski	252	361	X	"	68
Stork-Wurm	339	1041	XIII		90
Schneider-Toupet	151	106	XIV		108
Pillich-Toupet	152	1209	XIV		112
Ottowits	154	1253	XIV		123 Sec.7
Strebel	402	1418	XIX		74
Max Erich	409	1458	XIX		77
Eng.Delegation	419	1442	XIX		130
Reimann	32	840	II		76).

VII. The defendant Dr. Duerrfeld

Any examination of the prosecution and defense cases in chief would be incomplete if it was not rounded off with a description of the defendant, although, as far as can be ascertained, the prosecution did not raise any charges against Dr. Duerrfeld as a person.

Thus, we want to answer the following questions at the same time:

- 1) Whether the defendant was qualified to handle the task assigned to him,
 - 2) Whether it was in his nature to be capable of any criminal acts,
 - 3) And whether he was a fanatical National Socialist.
- Here, we want to refer in particular to the affidavits of the witnesses Wallisfurth and Eger, mentioned further down.

We want to let the witnesses and affiants speak for themselves if possible, in order to present as complete and perfect a picture of the case in chief as we are in a position to do.

The defendant comes from a civil servant family, that means a middle class home. The money for his formal education was earned by him to a great extent through working as a student in odd jobs. His affection and devotion to science can be seen from the fact that he, having had practical experience as a young engineer for several years, returned to the University as a teacher. When he had ascertained that he had grasped all the spiritual and intellectual goods which the university was capable of imparting to him, he resumed his practical work in 1927 by becoming a plant engineer at the I.G.'s Merseburg Ammoniakwerk.

His immediate superior at that time, Senior Engineer Ulrich, gives the following opinion about him (Exh. 342, Dr. Due. 1217, Book XIV, P. 4): "An assistant whom I valued because..... of his excellent specialist knowledge, his outstanding assiduity and devotion to the tasks he had been given." Dr. Keding,

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one of his colleagues during that time, reports (Trans.G.P.7663, E.P. 7595/96): "He was an outstanding engineer." And Dr. Hendip says (Exh. 343, Dr. Due.471, Book XIV, P. 10, Section 4): "In the association of chemists and engineers in employment" he devoted "all his energies in an unselfish manner on behalf of his colleagues towards the plant management when any of these men were to be dismissed because of lack of work."

Dr. Sauer, his highest technical superior in Leuna, states concerning the selection of tasks in Auschwitz (Exh. 341, Doc. Due.1224, Book XIV, P.2): "When in 1941, a particularly painstaking and experienced official was needed for the extremely difficult construction site of the Buna-and Treibstoffwerk at Auschwitz", Dr. Duerrfeld seemed to be the most versatile candidate for this task as a man who was fully familiar with both the technical type of engineering problems and, at the same time, also with social welfare measures to be introduced at this construction site which was far removed from all related industries."

I just want to refer to several other affidavits and witnesses testimony of former I.G. employees.

Affid. Stenger Exh. 78 Doc. Due.-311 B IV P. 67 Section					
Ruediger	423	419	IV	76	
L.Mueller	81	630	IV	91	12
Dr. Eggert	89	763	V	38/39	3
Appel	93	420	V	66	
Klots	128	633	VII	37	6
Frey	179	498	VII	125	15
Schmidt	221	917	IX	58	12
Heckenschmidt	268	218	XI	33/34	
Renner	322	1174	XIII	36	6

Examination Schneider on 20 Feb. 1948, Trans.G.P.7500, E.P.7435/					
Ter Meer	" 16 "	" "	" "	7208 "	7152 "
Krauch	" 14 Jan. "	" "	" "	5273 "	5245 "
Jeckne	" 24 March "	" "	" "	10114 /15	9975/80

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Everybody who was closely connected with the defendant voices an identical opinion about his character and dutiful, but at the same time, humane and friendly manners:

Dr. Irmgard Eger, assistant for personnel matters and statistics at the Auschwitz Plant, seems to hit the nail if she states: (Exhibit 169, Doc. Dae. 496, Book VII, Page 60/61)

"His guiding principle was his work, and by that I mean his work per se. I never had the impression that his work was in any way influenced by ideological or political viewpoints. The force and zest with which he devoted himself to his work, thus subduing all his private activities to his tasks, was not the fanatical devotion of a politically active man; rather, it was his joy in technical designing and creating similar to that of an artist who is possessed by his work... Repeatedly, I witnessed how Dr. Duerrfeld became incensed about the actions of National Socialist 'leading men' (Sauckel et cetera) which manifested themselves in compulsory measures by incomprehending instructions lacking all common sense, and which were void of any specialist experience and knowledge."

His secretary Ingeborg Faber states (Exh. 108, Doc. Dae. 181, Book VI, P. 40, Section 12): "At any rate, as I know Dr. Duerrfeld's character and his work it seems to be absurd to assume that he had even the slightest connection with all those bestial and heinous events of which I have now been informed."

Another secretary, Fraulein Hanni Dietze, concludes her affidavit by stating (Exh. 205, Doc. Dae. 103, Book XI, P. 16): "He considered it his foremost duty to see to it that each individual employee retained his interest in his work and his physical capacities to perform his duties. It was this attitude which was responsible for his really extraordinary respect he enjoyed with his staff and one could safely say that this respect bordered on adoration."

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Furthermore, the domestic aid Elfriede Moritz, who from 1940 up to the end of 1944 "was virtually a member of the Duerrfeld family", states: "As I judge him, Dr. Duerrfeld is not capable of committing any of the following inhumane acts: toughness, harshness, or even cruelty. Based on my experience in the family and with other people, I can state that Dr. Duerrfeld was always interested in listening to other people's worries and troubles, and that it was his habit to assist whenever he had a chance to do so."

His secretary Paul Gleitsmann, who knew all his secret affairs and who worked for him for more than 12 years, reports: (Exh. 76, Doc. Das. 259, Book VII, Page 46248). "Apart from the fact that I consider Dr. Duerrfeld incapable of criminal, irresponsible or slipshod - let alone even neglectful - actions or decisions, I did not observe any such actions nor did I hear about them or was aware of their effects My experience enables me to state to the best of my knowledge and belief: Dr. Duerrfeld's mind was always and exclusively on his work, his technical and social work, and he was concerned with technical problems and the people connected with them and their ultimate objectives. One could call him possessed by this task."

An outsider, the ~~director of the Chelmek Plant~~ ^{one following the Thule plan} the shoe factory of the Bata A.G. Herr Schultz - Bunte, states (Exh. 263, Doc. Das. 804 Book X, P. 122, Section 10):

"As far as I see him, Dr. Duerrfeld is and remains a person who has worked a tremendous lot in his life, and who does not owe his professional career to any kind of protection or, certainly not, to any party protection, but who attained to this position which he held there merely because of his capability, experience and his outstanding character traits.... (P. 124) . We were al-
ways of the same opinion, i.e. that any offenses ^{against} foreign workers

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should be most severely, punished; we were of opinion to help and further the German cause by behaving towards the people entrusted to us in such a manner as we would like to be treated, and expect to be dealt with, by other foreign citizens."

Finally, I would like to refer to the judgment of a political persecutee by the name of Wolfgang Wallisfurth (Exh. 98, Doc.Dwg. 454, Book V, P. 85290). Following his account of talks with Dr. Duerrfeld concerning his application for employment he says: "Later on, I was forced to report my persecution which I had to suffer from the Nazi Party. I also had to mention the pressure brought to bear by the Party on the Landrat's Office at Teschen and on the municipal authorities and the administration of Jahlunkau with the aim that I be, "fired immediately" because I was "politically not acceptable ". " I was stunned as if witnessing a miracle when Dr. Duerrfeld passed over this report by just shrugging it off with the brief remark that any such difficulties did not matter a bit as far as his plant was concerned." And he concludes: "However, I earnestly request in the interest of truth, right, and justice that Dr. Duerrfeld be acquitted of the charge of unsocial and inhuman actions. As long as I live, I would be a witness to the miscarriage of justice in the Duerrfeld Case. I shall always be grateful to this man, because he is a 100% gallant, socially acting, fair and decent person in the best sense, and because he was the best superior I have ever had in all my life."

I could quote many other statements of the same kind. In all the decisive points of this case, the witnesses are unanimous in their opinions, which many of them have voiced spontaneously and without being prompted to do so. These witnesses come from all walks of life in particular from the

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rank of foreman, workers, and from outside concerns. Their opinions dovetail in one particular point concerning the defendant, of whom, like many others, the witness Sitzenstuhl states: "He was like a father to all of us."

Therefore, I would like to briefly refer to the following statements:

Aff. Faust	Exh. 15	Doc. Due. 959	B. I. P. 85	Section 3
Söopf	36	307	II 89	1
Krist	45	126	III 32/3	
Sitzenstuhl	73	149	IV 31	1
Payer, Leo	83	577	V 8/9	7
Floto	99	414	V 74	
Schloettig	105	134	VI 18	
Hohenberger	114	251	VI 79	
May	171	187	VII 74	
W. Mueller	173	273	VII 87	17
Woelfer	176	344	VII 101	5 and
Harlos	185	791	VIII 22/23	11 and 12
Hofmann	186	817	VIII 25/26	12
Fusch	189	971	VIII 71/72	8
Schmidt	207	1036	VIII 106	13 and
Boehnert	211	1044	IX 11, 17/8	5 and 12
Reim	220	852	IX 52	5
Wolter	226	1127	IX 78	21
Kietel	250	231	X 59	
Mayer	254	927	X 77	8
Lagner	264	167	XI 8	5
Helwert	282	1229	XI 122	24
Gebhardt	285	349	XII 16	5
Nierste	289	675	XII 34	10
Struth	293	924	XII 47	6
Birkenholz	309	1119	XII 101	3
Zahn	310	907	XII 106	e
Lelsacher	311	697	XII 111	11
Kortebein	327	1191	XIII 50	7
Wegener	331	1162	XIII 65	
Blumel	332	1094	XIII 70	9 and
Gutbrecht	333	1201	XIII 71	1 and 2
Lustrow	344	691	XIV 12	2
Sauer	341	1224	XIV 3	
Hoepke	405	1436	XIX 69	5

Examination Schnaider on 14 April 1948, Trans. G.P. 11650/51 1140 E.P.
Stradal on 20 April 1948 " " 12134, 11931

In this connection, I would like to quote verbatim what the witness Braus has to say (Trans. G.P. 9095, 2.P. 9000): "Never - in 20 years in industry - did I find a more decent and fairer person and colleague than Dr. Duerrfeld, and for this reason alone it is quite impossible that he should have neglected his duties towards the prisoners at any time. Dr. Duerrfeld's fairness is beyond any doubt as far as all his colleagues and ~~from Dr. Duerrfeld~~ ~~----- all his colleagues and~~

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assistants are concerned."

The witness Dr. Giessen gave an excellent summary of the character of the defendant Dr. Duerrfeld, although Dr. Giessen is a very critical man who was completely at odds with all the Third Reich, ideologies, and who alertly watched the growing of the Auschwitz Plant (Exam. Giessen on 24 February 1948, Trans. G.P. 7608, E.P. 7543/44).

Having paid full tribute to the defendant's gift for organization and his outstanding knowledge as an engineer, he says: "Like any other professional and decent technical engineer, Dr. Duerrfeld stood up for his staff. He always tried to get the best for them, even for the prisoners. As I see it, I consider it a profound tragedy that Dr. Duerrfeld, who did his very best for the Auschwitz Concentration Camp, inmates, should now stand accused just for such benevolent activities."

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SUPPLEMENT

TO THE CLOSING BRIEF FOR THE DEFENDANT DR. LUERGFELD
affidavits which were introduced by the prosecution
in cross-examination.

Repeated reference has been made in the Closing-Brief for the defendant Dr. LUERGFELD to the statements made by the witness Dr. Karl BRAUS on the witness stand (Examination of 11 March and 12 March 1948, German transcript page 8982 - 9186, English transcript p. 8892 - 9099). In the case of Dr. BUEPFISCH the witness BRAUS was called to the witness-stand for the defendant, as one of the men who have the most intimate knowledge of labor conditions and conditions of life in the Auschwitz plant, he made detailed statements about the allocation of prisoners and their treatment.

However, the prosecution has submitted to the witness, in order to counter the statement made by him, an affidavit which the witness Dr. BRAUS made on the invitation of the prosecution on 23 August 1947.

Prosecution-exh. 1994, Doc. XI-10929

In this way, the prosecution tried to question the credibility of the witness. However, the witness stuck to the statement which he had made in the witness-stand and referred to the fact that the affidavit introduced by the prosecution was not written by himself and that he had only made some suitable corrections in the affidavit which had been submitted to him for signature. He further drew attention to the fact that an affidavit drawn up by somebody else, even after it had been duly corrected by him, could never have expressed what he himself would have stated had he been to draft this affidavit.

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The prosecution has thereupon submitted as exhibits copies of the interrogation:

Interrogation of 19 August 1947, Exhibit 2044, NI-14721
" " 20 " " " 2045, NI-14722
" " 21 " " " 2046, NI-14723
" " 21 " " " 2047, NI-14724
" " 22 " " " 2048, NI-14725

The prosecution also presented in Court as prosecution Exh. 2051 the affidavit BRUS (prosecution Exh. 1994) compared with those passages in the interrogation transcript (prosecution Exh. 2044/2046) which are referred to in the respective paragraphs of the affidavit.

In answer to this, the defense has now, in its turn, brought as an example a comparison of the different versions of several passages. There are compared in these selected six examples, respectively:

- A. Those passages in the 5 interrogation-transcripts which were referred to.
- B. The version which was selected by the interrogator for submission for signature to the witness Dr. BRUS.
- C. The respective final version of the affidavit (Exh. 1994) after revision by the witness Dr. BRUS.

Example 1:

... Interrogation BRUS NI-14724, ...4, of the original

Q: You did not know the Polish cemetery?

A: Yes, I knew it because once Russians had died after drinking Methanol although they had been warned beforehand.

Q: How many?

A: 10 to 20 people. At this time I tried very hard to convince the foreign laborers that Methanol is really a poison and that they must not drink it although it is similar in its qualities to the beverage alcohol (liquor).

Q: There were always persons who drank it as alcohol (liquor)?

A: Yes.

Q: How many?

A: On the whole about 50 persons; but not at once but in different groups.

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- B. Original version of the affidavit, section 6 submitted for signature to the witness.

"...I remember, for instance, that at one time 100 Russians died from Methanol poisoning after they had got hold of Methanol and drunk it thinking that it was ordinary liquor."

- C. Affidavit Dr. BRAUS FI-10929, Exhibit 1994

"...I remember for example that at one time 50 Russians had died of Methanol poisoning after they had got hold of some Methanol thinking it was drinking alcohol."

Example 2:

- A. Interrogation BRAUS FI-14725, page 6 of original

Q: Was it AMEROS who insisted on the high temp at Auschwitz, or was DUEKREFFEL's temp still higher than that requested by AMEROS?

A: This was probably due to Berlin.

Q: It was due to the I.G. It was an enormous temp.

A: It was, of course, DUEKREFFEL's ambition to reach the deadline as soon as possible.

Q: What was AMEROS' practical attitude like? Was he abrupt towards you?

A: No, Herr von HILF. AMEROS is always exceedingly conciliatory; I do not know whether you know him.

Q: I have been cross-examining him continuously. He is a man of great charm. What was his attitude towards DUEKREFFEL?

A: He said "We shall do it as DUEKREFFEL wants."

- B. Original version of the affidavit, section 7 presented to the witness for signature:

"...Otto AMEROS who was greatly concerned with the quick setting up of I.G. Auschwitz, supported DUEKREFFEL. In several construction conferences, when DUEKREFFEL pressed for a higher labor- or internment assignment, he supported him saying: 'We must do this as DUEKREFFEL wants it.'"

- C. Affidavit Dr. BRAUS FI-10929, exh. 1994, section 7

"...Otto AMEROS who was also greatly concerned with the quick setting up of I.G. Auschwitz, supported DUEKREFFEL. In several construction conferences when DUEKREFFEL pressed for increased worker or prisoner allocations, he supported him saying 'We will do this as DUEKREFFEL suggests.'"

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Example 3:

- A. Interrogation BRAUS NI-114725, pages 9 and 10 of the original.

"Q: I know, I know. What is your attitude?
A: I included it under the vile system of concentration camps. Hence I thought to myself, here comes a man with a perfectly good suit; he has to take it off and put on this awful striped suit.
Q: It is inadmissible to confiscate clothes?
A: Yes, that was in the big concentration camps.
Q: Furthermore, it is inadmissible to sell those clothes?
A: Yes, I have just said that. That was all included in the system."

- B. Original version of the affidavit, section 11, submitted to the witness for signature.

"...In Auschwitz I heard that the I.G. had bought thousands of garments from the Auschwitz concentration camp and sold these to their employees. Whenever I came across such a well-dressed employee of I.G. I could never get rid of the idea that these clothes had actually belonged to a man from whom they had been taken away illegally in the concentration camp and sold to the I.G. Farben."

- C. affidavit Dr. BRAUS NI-10929, Exhibit 1994, section 11!

"...In Auschwitz, I heard that the I.G. had bought thousands of garments from the Auschwitz concentration camp and sold these to their foreign laborers. I considered this unethical."

Example 4:

- A. Interrogation BRAUS NI-14725, page 8 of the original

"Q: I.G.'s participation in the Fuerstengrube was 50%?
A: Yes."

- B. Original version of the affidavit, section 14, submitted to the witness for signature

"The Fuerstengrube G.m.b.H. ^{was} ~~shares~~ were in possession of the I.G."

- C. Affid. Dr. Braus, NI 10929, Exh. 1994, section 14

"The Fuerstengrube G.m.b.H. shares were up to 51% in possession of Farben."

Underlining in the examples by us.

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Example 5:

- A. Interrogation ER.US NI-14723 page 4 of the original.
"Q: How do you contact the G.B.Chen? Does DUERRFELD do it direct, since he seems exceptionally ambitious?
A: Yes, I believe considering DUERRFELD's ambition, he did that himself."
- B. Original version of the affidavit, section 15, submitted to the witness for signature.
"It is due to the personal ambition of DUERRFELD that conditions in I.G. Auschwitz were what they were."
- C. Affidavit Dr. ER.US NI-10929, Exhibit 1994, section 16
"Whether DUERRFELD was very ambitious."

Example 6:

- A. Interrogation ER.US NI-14725, page 3 of original.
"Q: What about the evacuation of the plant?
A: I thought it was madness to hold out.
Q: How long before then did you want to evacuate,
A: Probably several months before I would have ordered the Germans, all the people in fact, if they could not ~~save~~ *protect* themselves - to save their property, their families, their children.
Q: For what reason did DUERRFELD oppose this so strongly?
A: Well,
Q: Was he a convinced National Socialist?
A: Because he was guided by these wrong National Socialist ideas."
- B. Original version of the affidavit, section 16, submitted to the witness for signature.
".....He himself (DUE) was a convinced believer in the national socialist ideas and did everything in his power to carry them out. He opposed, for instance, to the utmost the idea I had voiced repeatedly during the last months of 1944, which was to evacuate the plant in good time or at least to allow the members of the staff to decide for themselves whether they wished to ship their families and private belongings to the East in peace and comfort. He was possessed by the idea of carrying on - no matter what might happen - and to get the plant out of men and material."
- C. Affidavit Dr. ER.US NI-10929, Exhibit 1994, section 16
"...Personally he was a convinced believer in the National Socialist ideology. He opposed the idea which I had voiced to evacuate the plant in good time or at least to allow the members of the staff to ship their families and private belongings to the East in peace and comfort."

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The defense is of the opinion that it must draw the conclusion from the comparisons shown in the 6 examples given above that the statements of the witness BRUNUS made during interrogations actually differ in their tenor as well as in their contents from the version which was submitted to the witness as a summary affidavit of his interrogations, as stated by the witness BRUNUS in his examination in Court. It can be clearly seen that the corrections made by the witness BRUNUS have merely led up to a compromise. No doubt can therefore be raised against the statements made by the witness in Court.

The defense is also unable to agree with the statement of the interrogator that the interrogation had taken place in a "cordial atmosphere" (prosecution Exh. 2049, Doc. NI-14726).

*

The prosecution also confronted the defendant JAEHNE during his cross-examination with an affidavit made by his son Norbert JAEHNE (Exhibit 2059, NI-12002). In order to counter this affidavit, the defense points to the counter affidavit of the same Norbert JAEHNE which was introduced by the defense as DUERRFELD Exhibit No. 1 (Doc.-Doc.-806).

Finally, the prosecution during the cross-examination showed to four affiants for the defendant Dr. DUERRFELD with four affidavits which the affiants had previously made for the prosecution. The affiants in question are Reinut SCHNEIDER, DREISING, FLUST and BEYER and the prosecution-exhibits:

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(Proc. Exhibit 2132	Affid. SCHNEIDER	NI-14516
" " 2346	" DEEMING	NI-10930
" " 2349	" FUST	NI-9819
" " 2266	" BAYER	NI-11642

Of the two last documents, only a few sections were introduced.

The defense counters these affidavits referring to the examinations of these offents:

			G.transc.p.	E.transc.p.
SCHNEIDER	14 April 1948	11339 - 11490	11100 - 11282	
DEEMING	7 May 1948	14217 - 14250	13925 - 13953	
FUST	6 " "	14263 - 14343	13963 - 14040	
BAYER	12 " "	14733 - 14761	14457 - 14493	

In these examinations the offents have clarified, and/or corrected their statements signed for the prosecution. It must especially be pointed out that the examination of the witness BAYER has clearly proved that he (BAYER) had, in section 5 of his affidavit given to the prosecution (prosecution Exh. 2266), actually something in mind which was quite different from the version which was submitted to him by the prosecution and which he signed in the end. All he meant to say was something which every employee of the I.G. Farben knew - i.e. that the amount of work done by the prisoners was only 50 to 60% of the output of a normal, free, 100% efficient worker. (Examination BAYER of 12 May 1948, German transcript page 14748 and 14755 and 14757; English 1.14475, 14483 and 14485).

The defense states that after clarification of the essential questions of the above mentioned Rebuttal-documents, discrepancies with the case in chief in the herewith submitted trial-brief do no longer exist.

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